



State of California

Employment Training Panel

Arnold Schwarzenegger, Governor

February 16, 2010

Kenneth Olsen
President
MemoryTen, Inc.
2800 Bowers Avenue
San Jose, CA 95051

Dear Mr. Olsen:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET08-0428 for the period March 31, 2008 through March 30, 2010.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment B to the audit report.

We appreciate the courtesy and cooperation extended to our auditors during the audit. If you have any questions, please contact Stephen Runkle, Audit Manager, at (916) 327-4758.

Sincerely,

Original signed by:

Stephen Runkle
Audit Manager

cc: Neil Kripalani, General Counsel, MemoryTen
Sallyanne Monti, Administrative Subcontractor

Enclosures

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MEMORYTEN, INC.

Agreement No. ETo8-0428

Final Audit Report

For The Period

March 31, 2008 through March 30, 2010

Report Published February 16, 2010

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TABLE OF CONTENTS

	<u>Page Number</u>
AUDITOR'S REPORT	
Summary	1
Background	2
Objectives, Scope, and Methodology	4
Conclusion	5
Views of Responsible Officials	5
Audit Appeal Rights	5
Records	5
 SCHEDULE 1 - Summary Of Audit Results	 7
FINDINGS AND RECOMMENDATIONS	8

ATTACHMENT

ATTACHMENT A – Contractor's Response to Draft Audit Report
ATTACHMENT B – Appeal Process
ATTACHMENT C – Table of Disallowed Trainees
ATTACHMENT D – Table of Audit Interviewees

AUDITOR'S REPORT

Summary

We performed an audit of MemoryTen, Inc.'s (MemoryTen) compliance with Agreement No. ET08-0428, for the period March 31, 2008 through March 30, 2010. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit was performed during the period August 17, 2009 through August 18, 2009.

The Employment Training Panel (ETP) has reimbursed the Contractor a total of \$31,694. The Contractor has reported a total number of training hours to ETP's on-line tracking system during this Agreement for which reimbursement would exceed the maximum contract amount of \$132,288. Our audit supported that zero training hours reported to ETP are reimbursable. Therefore, the entire contract amount of \$132,288 is disallowed, and the paid amount of \$31,694 must be returned to ETP. The disallowed costs resulted from 45 trainees who had unsupported class/lab training hours, 2 trainees who did not meet minimum wage requirements, and 1 trainee employed in an ineligible occupation.

We also noted in administrative findings that: 1) The Contractor was not entitled to reimbursement for administrative support costs. 2) The Contractor is not a manufacturer. 3) The Contractor inaccurately reported trainee wage rates. 4) Payments to a subcontractor exceed maximum allowable administrative costs.

AUDITOR'S REPORT (continued)

Background

For the purposes of this Agreement, MemoryTen, Inc. (MemoryTen) represents a group of three separate business entities, MemoryTen, Inc., OEM PC World and We Love Macs, Inc., operating as one company. These three entities are located in the same facility and share the same ownership. All three operate as wholesale and/or retail sellers of computer memory chips and other computer components.

This Agreement is the second between MemoryTen and ETP. This project was developed based on MemoryTen's claim to the Panel that funding from its previous ETP Agreement allowed the company to "lay the foundation for a structured training program." MemoryTen also claimed that ETP funding further allowed it to expand business initiatives "by acquiring a higher volume of chip manufacturing services."

During development of this Agreement, MemoryTen proposed that an essential part of the training was to be in Lean Manufacturing. As a result, the Agreement curriculum included Lean Manufacturing, as well as other subject matter specifically relevant to manufacturing, such as ISO (International Organization for Standardization) and Manufacturing Resource Planning. These types of training were approved by the Panel based on the statements included in the ETP 130 Panel Memo that MemoryTen "manufactures" computer memory chips, and that its employees need formal training in "manufacturing skills." And, in fact, our audit found that 77 percent of the total hours recorded on MemoryTen training rosters are recorded as having been for training delivery of the three manufacturing specific subjects noted above. However, as addressed in Finding No. 5 of this report, MemoryTen is not a manufacturer in the commonly defined sense.

MemoryTen also claimed in its application to the Panel that the Institute for Business Performance of San Jose had been retained to provide formal training courses such as noted above. However, as addressed in Finding No. 1 of this report, no training was delivered by that subcontractor or any other training provider qualified to deliver such specialized training.

This Agreement allowed MemoryTen to receive a maximum reimbursement of \$132,288 for retraining 48 employees. Through July 22, 2009, the Contractor placed 45 trainees and received \$31,694 in progress payments from ETP. Further payments to the Contractor were held by ETP on May 22, 2009, due to potential issues of noncompliance raised in an ETP monitoring report dated May 7, 2008, as well as information received from an ETP trainee and former employee of MemoryTen that suggested training information submitted to ETP may have been inaccurate. On July

AUDITOR'S REPORT (continued)

29, 2009, ETP initiated an audit of this Agreement.

During preliminary risk analysis, ETP audit staff considered information obtained by ETP program staff via e-mail and telephone communications with the former employee of MemoryTen. In those communications, which occurred between May 6 and August 11, 2009, the former employee stated that training as reported to ETP by MemoryTen had not occurred; that employees of MemoryTen had been asked to sign rosters that were inaccurate, and that they had also been coached as to how to respond to an ETP representative regarding their participation in training that had not occurred. In a phone conversation on May 21, 2009 with an ETP Regional Office manager and program analyst, the former employee confirmed sending an initial e-mail dated May 5, 2009 alleging MemoryTen had misreported training hours to ETP. Furthermore, the former employee stated that:

- No employee received all of the training that was documented.
- Employees were directed to fabricate hours of training.
- Every week signed rosters were turned in by employees directly to the company's administrative manager, and then only the president and general counsel would sign them (*As noted in Finding No. 1, ETP Auditor found that original rosters did not include an actual instructor signature and were not subject to any verification of hours prior to being signed by president and general counsel*).
- Employees were told to record training anytime they learned anything new.
- Employees were told that by end of December 2008 every employee was to have 200 hours.
- On April 15, 2009, the date of the ETP monitor's visit, while the monitor waited upstairs, the general counsel coached interviewees to say that they received 200 hours, and they need more training.
- Employees were told to tell the analyst that the differences in hours recorded on individual trainee rosters was because some stayed in the training, while others left training according to what pertained to different employees.

Based on this information and potential issues of noncompliance noted by the ETP monitor, ETP audit staff planned this audit and prepared appropriate audit tests to determine if a reasonable assurance could be obtained that MemoryTen had met the requirements specified in the terms of the Agreement with ETP. This report discloses the results of our audit.

AUDITOR'S REPORT (continued)

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of MemoryTen, Inc. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that MemoryTen, Inc. complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Training documentation supports that trainees received the type of training and training hours reported to ETP and/or reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Training rosters are originals and meet ETP requirements and the terms of the Agreement i.e. *trainee names, signatures and initials, trainer names and signatures, dates, hours delivered, training types, and training courses*.
- Secondary source documents and supporting evidence, such as *training needs assessments, training plans, training schedules, training materials related to courses recorded on rosters, evidence of trainer qualifications, as well as invoices for subcontracted trainer services*, support that trainees received the type of training and training hours reported to ETP and/or reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Trainee and/or trainer information obtained by questionnaire and/ or interview support that trainees received the type of training and training hours reported to ETP and/or reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Trainees were eligible to receive ETP training.
- Trainees were employed continuously full-time for 90 consecutive days after the end of their reported training period, and the 90-day retention period was completed within the Agreement term.
- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of

AUDITOR'S REPORT (continued)

the 90-day retention period.

- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported that zero training hours reported to ETP are reimbursable. Therefore, the entire contract amount of \$132,288 is disallowed, and the paid amount of \$31,694 must be returned to ETP.

Views of Responsible Officials A draft audit report was issued to the Contractor on October 27, 2009. The Contractor responded to the draft audit report by letter dated November 27, 2009. The Contractor's entire response is incorporated within Attachment A of this report.

The Contractor disagreed with Finding Nos. 1, 3, 5, and 7. The Contractor conceded Finding Nos. 2, 4, and 6. The total disallowed costs were not reduced based on the Contractor's response. The final audit report includes updated information for Finding No. 3 based on the Contractor's response to the Draft Audit Report which was received on December 7, 2009. The Contractor's response and auditor comments are included in the Findings and Recommendations Section of our report.

Audit Appeal Rights If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).

Records Please note the ETP Agreement, Paragraph 5.6, requires you to assure, "ETP has the right to examine or audit any and all records, papers, and documents related to the delivery of services under this Agreement to the extent it deems necessary. This right begins upon the effective date of this Agreement, and extends to 4 years from termination of this Agreement or 3 years from Fiscal Closeout, whichever is later."

AUDITOR'S REPORT (continued)

Stephen Runkle
Audit Manager

Fieldwork Completion Date: August 18, 2009

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET08-0428 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

MEMORYTEN, INC.

AGREEMENT NO. ET08-0428

FOR THE PERIOD

MARCH 31, 2008 THROUGH MARCH 30, 2010

	<u>Amount</u>	<u>Reference*</u>
Maximum Reimbursable Amount per Agreement	<u>\$ 132,288</u>	
Total Cost of Training Hours Reported to ETP	<u>\$ 162,174</u>	
Unsupported Costs:		
Unsupported Class/Lab Training Hours	162,174	Finding No. 1
Minimum Wage Requirement Not Met	-	Finding No. 2
Ineligible Trainee Occupations	-	Finding No. 3
Contractor Not Entitled to Reimbursement for Administrative Support Costs	-	Finding No. 4
Contractor Not a Manufacturer	-	Finding No. 5
Inaccurate Reporting	-	Finding No. 6
Subcontractor Payment	<u>-</u>	Finding No. 7
Total Unsupported Costs	<u>\$ 162,174</u>	
Training Costs Supported	<u>\$ 0</u>	
Total Disallowed Costs	<u>\$ 132,288</u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Training rosters maintained by MemoryTen, Inc. (MemoryTen) did not meet ETP requirements and therefore supported zero of the Unsupported training hours and training types reported to and/or reimbursed by Class/Lab Training Hours ETP for 45 trainees. Furthermore, no credible secondary source documentation or information could be obtained that supported training occurred as reported to ETP and/or as was specified by the terms of the Agreement between MemoryTen and ETP. Our conclusion is based on our consideration of and/or our unsuccessful attempts to obtain supporting information from the following sources:

1. Original classroom/laboratory training rosters maintained by the Contractor.
2. Secondary source training documents and/or other supporting evidence, such as existing training needs assessments, training plans, training schedules, training materials related to courses recorded on rosters, evidence of trainer qualifications, as well as any invoices for training provider services.
3. Information obtained from MemoryTen employees.

The following criteria are applicable:

Title 22 California Code of Regulations (CCR), Section 4440(y) states: (1) "Classroom training is formal instruction provided to a group of individuals, in a classroom setting removed from the trainee's usual work environment, meeting regularly for training in a specific skill under the constant and direct guidance of a qualified trainer." (2) "Laboratory training is "hands-on" instruction or skill acquisition conducted in a non-productive environment, or simulated work setting, under the direct training of a laboratory trainer that may require the use of specialized equipment or facilities by the trainee. The trainer's time during laboratory training must be dedicated exclusively to the instruction of trainees."

Title 22 California Code of Regulations (CCR), Section 4442 requires Contractors to provide, as proof training was delivered, records that clearly document all aspects of training. Classroom/laboratory training records must include hours of attendance and dates of training, be certified daily with an instructor signature, and signed and/or initialed daily by the trainee.

Section 2.12 of the Agreement between MemoryTen and ETP states, "Contractor represents that training will only be delivered by instructors who are competent in the subject matter. Contractor represents that instructors will satisfy certification and licensing

FINDINGS AND RECOMMENDATIONS (continued)

requirements as may be applicable, for all training provided under this Agreement.”

Section 2.14 of the Agreement between MemoryTen and ETP states, “Contractor understands that any misrepresentation of material fact made by it or its agent to the Panel or ETP staff, whether set forth herein or otherwise, constitutes grounds for immediate termination of this Agreement.”

Section 3.2.1 of the Agreement between MemoryTen and ETP states, “Reimbursement is for actual hours of attendance, within the range of hours for each Job Number shown in Exhibit A, Chart 1. Each trainee must attend training for the minimum number of hours for payment to be earned, and payment cannot be earned for attendance beyond the maximum number of hours.”

Section 3.8 of the Agreement between MemoryTen and ETP states, “Contractor must use the ETP Online Class/Lab Tracking System to report attendance. Contractor must also document attendance at each training session in the form and manner required by ETP.”

Section 4.1 of the Agreement between MemoryTen and ETP states, “... ETP reimbursement is limited to the types of training approved for a given Job Number as shown in Exhibit B, Menu Curriculum.”

Section 5.8.1 of the Agreement between MemoryTen and ETP states, “Contractor must maintain original classroom Rosters in hard-copy signed by each trainee and instructor for all Class/Lab training. The only exception is for Contractors using a Learning Management System in which case Class/Lab Rosters may be maintained electronically.

Audit Sample

Our initial audit sample for the testing of class/lab training hours included 19 (15 random/statistical and 4 judgmental/non-statistical) of the 45 trainees placed in the Agreement. Auditor’s review of original training rosters found that 0 of the 19 trainees met ETP record keeping requirements for training hours reported to ETP. Thus, 15 of the 15 random trainees (100 percent error rate) were disallowed, along with the 4 judgmental trainees, due to a lack of instructor signatures and inaccurate training courses recorded on training rosters.

In lieu of extrapolating a probable error rate based on the initial statistical sample audit results (100 percent error rate), and with a good cause to believe that no training hours reported to ETP were supported by adequate documentation, ETP Auditor performed a review and analysis of all original MemoryTen class/lab rosters for

FINDINGS AND RECOMMENDATIONS (continued)

the remaining 26 placed trainees. The expanded review determined that 0 of 45 trainees (100 percent error rate) were found to have material unsupported training hours. Thus, training hours were disallowed for a total of 45 trainees (19 initial audit sample + 26 expanded audit sample) or 100 percent of trainees placed. Total training hours reported to ETP for reimbursement for these 45 trainees represent \$162,174 in disallowed training costs. The paid amount of \$31,694 must be returned to ETP.

Furthermore, based on the fact that MemoryTen misrepresented material facts regarding the nature and quantity of the training, as reported to ETP and recorded on classroom/laboratory rosters, we have determined that this Agreement should be terminated. The basis for our finding, which is the result of our testing and analysis of items 1 – 3, as noted above, is summarized below:

Original Classroom/Laboratory Training Rosters Not in Compliance

MemoryTen class/lab rosters do not include valid instructor signatures. 100 percent of those rosters were signed by the company's general counsel (Audit Interviewee No. 4), and president (Audit Interviewee No. 5), who were not instructors. Their names were printed beside their signatures on the lines below the instructions "Print Instructor(s) name(s)". Their signatures appear below the printed title "TRAINER SIGNATURE." Instructions printed below the title state: "Trainer signs only once. Signature covers all training indentified sequentially on this roster as being provided by this Trainer."

On August 17, 2009, during the audit entrance conference, ETP Auditor was provided, by the general counsel, a copy of a letter dated August 12, 2009 from himself to MemoryTen, Inc. that included the heading "MemoryTen ETP File." That letter states: "My signature on each of the rosters (sp.?) is indication of my overall review, generalized audit check and approval of the underling (sp.?) training only." The general counsel also stated in the entrance conference that he did not act as an instructor for any training as recorded on all MemoryTen training rosters maintained for this Agreement. In an interview conducted on August 18, 2009, MemoryTen's president also confirmed he did not deliver the training for which he signed on the line designated for a trainer's signature. He stated that he signed the rosters after-the-fact on a regular basis, usually every two weeks or so, without verification that the information contained on the rosters was correct.

Furthermore, during the audit entrance conference, MemoryTen representatives stated that various MemoryTen department managers and supervisors delivered the training reported to ETP.

FINDINGS AND RECOMMENDATIONS (continued)

However, none of these managers and/or supervisors signed any of the rosters. During interviews conducted with four of these individuals on August 18, 2009, ETP Auditor discovered that there was no management oversight of the recording of training hours by employees on the original rosters. Rosters were distributed by the company's administrative manager directly to employees. Then employees were solely responsible for recording hours on multi-day rosters for weekly and/or biweekly periods. Employees then returned the rosters to the administrative manager without any direct supervisory review or verification of the hours they recorded. ETP Auditor determined that no management controls were in place to ensure training hours recorded by employees were accurate.

In addition, ETP Auditor found that the majority of course titles recorded on original MemoryTen rosters are not accurate. The table below shows the results of our review of the 362 original MemoryTen training rosters regarding the course titles recorded on those rosters. (*"Other Training" includes a combination of 5 topics: Performance Management, Equipment Operation, Product Technical Skills, Intermediate/Advanced Software Systems, and Advanced Packaging Techniques.*)

Training Courses Recorded on Rosters				Total No. of Rosters
Lean Manufacturing	ISO	Manufacturing Resource Planning	Other Training	
158	77	43	84	362
44%	21%	12%	23%	100%

As shown in the table above, ETP Auditor found that 77 percent of the course titles recorded on MemoryTen rosters were in three specific manufacturing related topics i.e. Lean Manufacturing, ISO (International Organization for Standardization) and Manufacturing Resource Planning. However, in interviews conducted on August 18, 2009, no MemoryTen manager and/or supervisor stated they had provided training in any of these topics or that they were qualified to do so. ETP Auditor also found that no qualified subcontractor was hired to provide these types of training. Furthermore, no other documentation and/or evidence of any other kind could be obtained that supported training in Lean Manufacturing, ISO, and Manufacturing Resource Planning was ever delivered to employees as recorded on original training rosters maintained by the Contractor.

FINDINGS AND RECOMMENDATIONS (continued)

Therefore, based on the facts as noted above and listed below:

- 1) Rosters do not include a valid instructor signature.
- 2) Rosters were not subject to any form of verification.
- 3) Rosters include inaccurately recorded training topics.

ETP Auditor concluded that original MemoryTen training rosters are unreliable documents that do not meet ETP requirements and do not support training hours as reported to ETP.

No Secondary Source Evidence of Training Obtained

MemoryTen was unable to provide ETP Auditor any credible secondary source records, documents, or training material that would support training as reported to ETP was delivered. Since MemoryTen class/lab rosters did not support training reported to ETP, ETP Auditor requested that MemoryTen provide for review any existing training needs assessments, training plans, training schedules, credible training materials related to courses recorded on rosters, evidence of trainer qualifications, as well as any invoices for training provider services. None of these items were available for review by ETP Auditor during the audit visit. Therefore, ETP Auditor concluded that no secondary source evidence supported training hours as reported to ETP.

Information Obtained From MemoryTen Employees Does Not Support Training as Reported

ETP Auditor conducted interviews with five MemoryTen employees (Audit Interviewee Nos. 1, 3, 7, 8, and 9), who had training hours reported to ETP. These trainees also completed questionnaires regarding participation in training reported to ETP. Three of these trainees (Audit Interviewee Nos. 7, 8 and 9) are managers or supervisors. Interviewee Nos. 8 and 9 were also reported to have delivered training for this project. None of the five employees interviewed confirmed that they had received training in Lean Manufacturing, ISO, or Manufacturing Resource Planning. However, as an example, original training rosters maintained by MemoryTen for Interviewee No. 1, who is employed as an accounting clerk, indicated she received training in a combination of only those three manufacturing related subjects for a total of the 200 hours reported to ETP. Information provided by Interviewee Nos. 1 and 3 also led ETP Auditor to conclude that any training that occurred took place primarily as informal employee meetings in various work areas, not as formal classroom/laboratory training as defined by ETP regulations.

FINDINGS AND RECOMMENDATIONS (continued)

In addition, statements made by MemoryTen management staff members/trainers interviewed by ETP Auditor (Audit Interviewee Nos. 2, 6, 8 and 9) also supported the conclusion that any training provided during the period reported to ETP was informal, ad-hoc training, and/or on-the-job training conducted primarily in regular production work areas, not in a classroom, a non-productive environment, or a simulated work setting. Furthermore, none of the management staff members/trainers stated that they had delivered training subjects recorded on MemoryTen Rosters, and none could provide any credible evidence supporting that they have delivered formal class/lab training of any kind, such as training plans, training schedules, or actual training materials related to courses recorded on rosters. Based on the facts noted above, ETP Auditor concluded that no information obtained from MemoryTen employees supported training hours as reported to ETP.

Overall, based on the facts that all original training records/rosters maintained by MemoryTen are unreliable documents that do not meet ETP requirements and do not allow for an accurate accounting of any potentially eligible training hours delivered to MemoryTen employees during the period reported to ETP, and that no secondary evidence supports the amount or type of training reported to ETP occurred, ETP concludes that the required minimum training hours were not met for 45 of the 45 trainee placements (100 percent). ETP also concludes that the misrepresentation of training information by MemoryTen to ETP supports that this Agreement should be terminated.

Recommendation	MemoryTen, Inc. must return \$31,694 to ETP. MemoryTen should ensure that documentation that supports training hour requirements is maintained in accordance with the terms of the Agreement and Title 22, California Code of Regulations. Furthermore, MemoryTen should enact sufficient management controls regarding training records to facilitate the accurate recording of training data and initiate a system of verification to ensure that training courses and hours recorded on original training rosters are accurate prior to claiming reimbursement. Additionally, MemoryTen should ensure trainees meet the required training hours specified in the Agreement prior to claiming reimbursement from ETP. All training hours reported to ETP must be an accurate representation of actual training provided.
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FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 1 – On December 7, 2009, ETP received the Contractor's 18-page Contractor's Response and Auditor's Comments response, along with a 10-page attachment of 3 Wikipedia articles and the ETP130 Panel Memorandum. The Contractor's response is dated November 27, 2009. Please refer to Attachment A for the complete Contractor's response. Our comments below address the Contractor's comments relevant to the factual basis of our audit finding.

1. Contractor's Response:

MemoryTen acknowledges the signatures of Mr. Olsen and Mr. Kripalani on all rosters was a "systemic administrative error." MemoryTen states the rosters were signed by Mr. Olsen and Mr. Kripalani as the "authority figures" of MemoryTen.

Auditor's Comments:

We acknowledge the Contractor's confirmation that all training records have a "systemic administrative error" where the training records were signed by Mr. Olsen, President, and Mr. Kripalani, General Counsel, as, "...the 'authority figures' in the MT Group..." This statement supports Finding No. 1. Training records do not meet record keeping requirements of Title 22 California Code of Regulations (CCR), Section 4442, which specify that classroom/lab training records be *certified* daily with an *instructor* signature. However, in addition to lacking the certifying element of an instructor signature, which clearly supports that the training records do not comply with ETP requirements, our determination in Finding No. 1 that MemoryTen rosters are unreliable is further based on the lack of any relevant management controls regarding the distribution, possession, maintenance and verification of the training information recorded on these documents and/or the scheduling of and attendance of training by MemoryTen employees.

The direct purpose of an instructor's certification i.e. signature *is* to document an *authoritative* verification of courses delivered and session data recorded, such as dates and hours of trainee attendance. The instructor's signature is considered a credible verification because an instructor is by nature an authority who is physically *present* in the particular training session(s) recorded on the rosters. Furthermore, based on that premise, the instructor should ensure the course information is correct prior to obtaining trainee signatures, and the instructor should control the distribution and collection of rosters. To further ensure reliability of the roster, the instructor should also maintain primary control of the rosters to ensure the document's reliability until submitted to a training administrator or other designated representative of

FINDINGS AND RECOMMENDATIONS (continued)

management.

However, MemoryTen rosters were subject to no such verification or forms of control. As stated in a letter dated April 15, 2009 from the Contractor to the ETP Regional Office analyst regarding MemoryTen record keeping methods, "Instead of passing around a single day roster for all trainees in that class to sign, the trainees marked their training hours on their own individual Multi-day rosters." This self-record-keeping process was also confirmed during our audit and noted in Finding No. 1. In essence, the training records maintained by MemoryTen were self-maintained employee time sheets that were not subject to *any* form of direct instructor and/or supervisory verification of accuracy. Interviews conducted by ETP Auditors revealed that MemoryTen managers and/or supervisors who stated they delivered employee training did not at any time verify information on the training records nor did any of them prepare or maintain any secondary record of the type and amount of training they delivered or to whom it was delivered, such as training schedules or calendars and/or employee work schedules or training plans.

As also stated in the letter noted above and confirmed during our audit, "The variation in the number of hours per trainee is related to the trainees' individual need for training being delivered in these classes." "Not all trainees could benefit from or needed to attend all of the training that occurred." Although this premise for self-record-keeping was presented as a basis for employees recording their own training hours, ETP auditors requested but were not provided with records of training needs assessments or any other management process that would be evident of a supervisory evaluation that determined what type or amount of training "trainees could benefit from or needed to attend." Therefore, based on overall information obtained, ETP auditors determined that, without any management oversight, individual trainees were supposed to record varying hours of training they attended on a daily basis because they were allowed to come and go from training at will. *This determination also supported our conclusion that training was provided on an informal, ad-hoc basis, not as formal classroom/laboratory training.*

2. Contractor's Response:

MemoryTen disputes ETP's use of statistical methods, and states the results should be dismissed for lacking analytical rigor in the following quote from Attachment A, Page 12, 3. Findings:

"The Audit Manager took a random sample of 15 (and a non-random sample of 4) class/lab training hours in the rosters. He then, through extrapolation found a 100% error rate in the

FINDINGS AND RECOMMENDATIONS (continued)

records keeping because the President signed all the rosters... The Audit Manager then concludes that since the entire population of documents are incorrectly signed, they are all disallowed... The statistical sampling did not even state the specific sampling objective or why this sampling methodology was applicable or relevant... No 'f' or 't' test was presented to determine if this sample size even had statistical significance. There is no mention of 'standard error' in the results.... We challenge the application of this methodology to the audit objective and given this situation. Any and all derived conclusions from this section should be dismissed for lacking analytical rigor."

Auditor's Comments:

We strongly disagree with these comments. As identified in Finding No. 1, the audit sample was expanded to a 100 percent review of all placed trainees. As also stated in Finding No. 1, extrapolation based on statistical sampling did not occur. Therefore, statistical methodology is irrelevant to the disallowed costs that resulted from our review. The documentation of details related to our initial statistical sample and the results of the initial testing of that sample are only included in Finding No. 1 to explain part of the overall risk analysis used to determine that ETP Auditors would proceed with a 100 percent review. That determination was based on the auditor's professional judgment that a significant possibility existed that zero training hours reported to ETP were supported by adequate documentation and/or secondary evidence, an assessment based on both qualitative and quantitative considerations, such as the number of initial sample trainees who had unsupported training hours, the results of interviews, the apparent lack of controls related to the recordkeeping process, and our unsuccessful attempts to obtain credible secondary source evidence that the training records were reliable. All elements of our determination process as described here and in Finding No. 1 are supported by the July 2007 revision of Generally Accepted Government Audit Standards (GAGAS) *Chapter 7: Field Work Standards for Performance Audits*, published by the Comptroller General of the United States.

3. Contractor's Response:

MemoryTen states, "The Draft Audit Report alleges that MT misrepresented material facts regarding the nature and quality of the training. That is simply false."

FINDINGS AND RECOMMENDATIONS (continued)

Auditor's Comments:

We continue to maintain that MemoryTen misrepresented material facts regarding the nature and *quantity* of the training, as reported to ETP and recorded on classroom/laboratory rosters. Our determination is based on the following facts: 1) As detailed above in Item No. 1, MemoryTen rosters do not comply with ETP regulations and the terms of the Agreement. 2) The Contractor did not provide ETP auditor any credible evidence that a *formal*, structured training program existed at MemoryTen nor did ETP Auditors observe any evidence of such while on-site at the company's place of business. 3) The results of employee interviews do not support that *formal* classroom/laboratory training in any curriculum subject specified in Agreement occurred as reported to ETP.

According to the ETP 130 Panel Memorandum, MemoryTen represented, "Funding from MemoryTen's previous ETP Agreement allowed the company to lay the foundation for a structured training program...MemoryTen represents that ETP funds will not displace the existing financial commitment to training of participating employers [MemoryTen Group]...The company's representatives report that the training funds provided in MemoryTen's recent ETP Agreement allowed the company to set the foundation for much needed training programs. The company is now able to provide new workers with skills across various job functions in a structured format, whereas before the ETP training funds, training was provided ad hoc as on-the-job training."

Title 22 California Code of Regulations (CCR) 4400(y)(1), defines Classroom training as, "...formal instruction provided to a group of individuals, in a classroom setting removed from the trainee's usual work environment, meeting regularly for training in a specific skill under the constant and direct guidance of a qualified trainer." This definition is also included in Exhibit D of the Agreement. Title 22 CCR, 4400(y)(2), defines Laboratory training as, "...'hands-on' instruction or skill acquisition conducted in a non-productive environment, or simulated work setting, under the direct training of a laboratory trainer that may require the use of specialized equipment or facilities by the trainee. The trainer's time during laboratory training must be dedicated exclusively to the instruction of trainees."

We acknowledge that *informal*, *ad-hoc* training may have occurred, which is not reimbursable under this Agreement.

FINDINGS AND RECOMMENDATIONS (continued)

However, evidence obtained does not support training occurred in a *structured, formal* classroom setting (i.e. *nature* of the training) in the *quantity* reported to ETP. MemoryTen reported to ETP that all training provided was classroom/laboratory training. On August 17, 2009, ETP Auditors requested MemoryTen provide training needs assessments, training schedules/calendars, or training plans to substantiate a *formal, structured* training program was in place as represented to the Panel. ETP Auditors were not provided with any of these requested documents.

Furthermore, information obtained by ETP auditors during interviews conducted on August 18, 2009 and included below also supported that training was provided in an informal, ad-hoc manner and not as part of a structured training program.

Interviewee No. 1, Accounting Clerk

Interviewee No. 1 stated she received training in MIVA and MAS software under this Agreement. Interviewee No. 1 stated training was scheduled, "As we go."

Interviewee No. 2, Chief Financial Officer

Interviewee No. 2 stated she provided training under this Agreement. When ETP Auditors asked Interviewee No. 2 if she had a training schedule, the interviewee responded that she did not, but training occurred usually every Tuesday and Thursday. Interviewee No. 2 stated training occurred in the conference room, in the accounting offices, or at individual work stations.

Interviewee No. 3, Supervisor

Interviewee No. 3 stated she received training in product learning/identification, and was instructed by Interviewee No. 8. Interviewee No. 3 stated most "meetings" [training] were in the cage area on the warehouse floor.

Interviewee No. 6, Operations Manager

Interviewee No. 6 stated he provided training under this Agreement. The interviewee stated there always were training sessions, and the ETP funding didn't increase or decrease the training provided. Further, when asked by ETP Auditors how training was scheduled, Interviewee No. 6 stated, "It [training] wasn't pre-set." Interviewee No. 6 stated he was qualified to teach Lean Manufacturing (LEAN) due to his training and experience. When asked about training he had received,

FINDINGS AND RECOMMENDATIONS (continued)

Interviewee No. 6 stated that he had received three months of formal LEAN training from a professional training vendor while employed at a previous employer between 1995 and 1999. He stated that employer was a computer manufacturer. Interviewee No. 6 subsequently stated he is not a certified LEAN trainer, and that training materials were not used when he provided training. Further, the interviewee confirmed he had no secondary evidence of training he had provided, such as training schedules, calendars, or materials which would support training had been delivered as reported to ETP.

After the interview, Interviewee No. 6 approached ETP Auditors and described the following training process: Training sessions occurred when he and Interviewee No. 8, the Shipping Manager, determined there was an error or area for improvement. Then “the team” immediately stopped and addressed the problem, discussed what new procedures could be implemented to improve the process or solve the problem, and finally decided on a course of action. He or the Shipping Manager would then follow-up via e-mail confirming the new procedure or process with the affected employees. Interviewee No. 6 provided ETP Auditors with a procedure update e-mail as an example of the above process.

Interviewee No. 7, Office Administration Manager

Interviewee No. 7 is the Contractor's Authorized Representative per the Agreement. ETP Auditors had requested training course materials on August 17, 2009, to support training occurred in a *structured, formal* classroom setting. During the interview of Interviewee No. 7 on August 18, 2009, the administrative subcontractor for this Agreement, Sallyanne Monti, interposed to provide ETP Auditors the following items she identified as training course materials used during training reported to ETP:

Books:

- Gemba Kaizen - A Commonsense, Low-Cost Approach to Management, by Imai, M.
- The Best of Branding - Best Practices in Corporate Branding, by Gregory, J.
- Sustaining Knock Your Socks Off Service, by Connellan, T. & Zemke, R.
- Delivering Knock Your Socks Off Service, 3rd Ed., by Performance Research Associates
- Knock Your Socks Off Answers, by Anderson, K. & Zemke, R.
- Knock Your Socks Off Service Recovery, by Zemke, R. & Bell, C.

FINDINGS AND RECOMMENDATIONS (continued)

Binders:

- Training Manual: MRP Sales Module
- Training Manual: MRP Shipping and Receiving Module
- Training Manual: MRP Customer Service Module

DVDs:

- Manufacturing Insights: Sustaining Effort
- Employee Involvement, Key Strategies, Senior Employees: Boeing Company, Integrated Defense Systems
- C17 Production Operations: Boeing Company, Integrated Defense Systems
- Kaizen Effects
- Making LEAN Happen
- LEAN Culture
- Visualize Controls

VHS:

- Manufacturing Insights: Breakthrough Kaizen Effects, Society of Manufacturing Engineers

However, while on-site at MemoryTen, ETP Auditors had not been shown a storage area or file cabinets or any other area or room on MemoryTen's premises containing a stock of formal training materials or any area or room that could be defined as an area dedicated for the purpose of providing formal classroom or laboratory training. All of the *single* copies of books identified above were in new, or near-new, condition, and did not appear to have been used. The single binders appeared to be procedure manuals, and did not include training course materials such as PowerPoint slides, course outlines, syllabuses, class handouts, or other typical training materials associated with *formal* classroom/laboratory training sessions that had been delivered in the volume of hours reported to ETP. *(As an example, Memory Ten reported to ETP that 18 of 45 placed trainees received that maximum 200 hours of training. Another 10 received between 130-195 hours, as reported by MemoryTen)*

Interviewee No. 7 stated that some training was watching training videos. When asked by ETP Auditors if the video viewing was "self-directed," Interviewee No. 7 responded, "Yes." When asked if employees could check out the books identified above, the Contractor Representative stated, "Yes." Self-directed training does not constitute formal classroom/laboratory training, which requires the, "...constant and direct guidance of a qualified trainer." Therefore, ETP Auditors determined that the materials provided by the administrative subcontractor do not constitute *credible* course material and do not represent credible secondary evidence of training, as identified in the Audit Report.

FINDINGS AND RECOMMENDATIONS (continued)

Interviewee No. 8, Shipping Manager

Interviewee No. 8 stated he provided training to people within his department, and maybe 1 percent of training to employees in other departments. When asked how training was scheduled, the interviewee responded training was done as work allowed, and was scheduled verbally. When asked where the training occurred, Interviewee No. 8 stated, "We don't really have a classroom," and that some training had occurred, "In a conference room that no longer exists." This interviewee stated he provided training in shipping, receiving, testing, quality control, and product. Interviewee No. 8 stated, "I've streamlined the system so well I could teach you guys in two minutes." The interviewee also stated training with mostly managers would be in the conference room from 12:30 to 1:00 p.m. He described this training as "knocking heads."

4. Contractor's Response:

MemoryTen contends, "MT class/lab rosters do include valid instructor signatures. The president [Ken Olsen] personally did over 50% of the training and he was the instructor. So did the CFO and other supervisors."

Auditor's Comments:

We maintain the rosters do not include valid instructor signatures. MemoryTen states the rosters included valid instructor signatures since Mr. Olsen, "...personally did over 50% of the training and he was the instructor." MemoryTen does not identify how this percentage was determined, nor did MemoryTen provide any documentation supporting Mr. Olsen completed 50 percent of the training. Although Mr. Olsen may have provided training, the rosters do not differentiate between training Mr. Olsen might have delivered versus training other instructors may have provided, since Mr. Olsen signed all rosters. Based on Mr. Kripalani's statement included in Item No. 1, Mr. Olsen and Mr. Kripalani signed the rosters as "authority figures" of MemoryTen, not as instructors.

Furthermore, Interviewee No. 7, the company's Office Administration Manager and Mr. Olsen himself both stated that Mr. Olsen normally signed all the rosters at the end of two week periods, when the employee maintained rosters were provided to him by the Office Administration Manager. Mr. Olsen did not at any time during our audit claim to *directly* certify training rosters as an instructor. He stated he signed all rosters well

FINDINGS AND RECOMMENDATIONS (continued)

after-the-fact, as a company representative, as directed by Mr. Kripalani. Mr. Olsen did not dispute the fact that none of the dates and hours recorded by employees on the rosters were subject to any management and/or supervisory verification prior to his signing them.

5. Contractor's Response:

MemoryTen states, "Ken Olsen, President, is the de-facto supervisor of all employees at MT, as explained before, and MT has met this requirement under Par.5.8.2 of the ETP/MT contract (requiring employees' supervisor signature and that the trainees completed the hours of training)."

Auditor's Comments:

We disagree with this statement. MemoryTen stated they, "...met this requirement under Par.5.8.2 of the ETP/MT contract (requiring employees' supervisor signature and that the trainees completed the hours of training)." MemoryTen rosters clearly contain "Trainer Signature" printed below the lines on which both Mr. Olsen and Mr. Kripalani signed. Furthermore, Paragraph 5.8.2 of the Agreement between ETP and MemoryTen references training record requirements for Computer Based Training (CBT). Paragraph 5.8.2 does not apply to class/lab training records.

As included in Finding No. 1, Paragraph 5.8.1 of the Agreement, which applies to class/lab training records states: "Contractor must maintain original classroom Rosters in hard-copy *signed by each trainee and instructor for all Class/Lab training. The only exception is for Contractors using a Learning Management System in which case Class/Lab Rosters may be maintained electronically." This Agreement did not include approval by the Panel for electronic records. Thus, MemoryTen provided ETP auditors paper rosters to support class/lab training hours reported to ETP.

Also, as included in Finding No. 1, Title 22 CCR 4442 requires Contractors to provide, as proof training was delivered, records that clearly document all aspects of training. *Classroom/laboratory training records must include hours of attendance and dates of training, be certified daily with an instructor signature, and signed and/or initialed daily by the trainee.

**Underlines added for emphasis*

FINDINGS AND RECOMMENDATIONS (continued)

6. Contractor's Response:

MemoryTen states, "...ETP projects are required to be monitored during the project...Had ETP done its requisite monitoring visit and oversight during the progress of this project/contract, this systemic [sic] administrative error would have been easily caught and remedied. Par. 5.12 (ETP/MT Agreement) gives MT an opportunity to cure this defect or problem within 30 calendar days if caught early in the term of the project with the ETP monitoring visit. There is mutual culpability by ETP and MT in this administrative error by ETP's omission of a timely monitoring visit."

Auditor's Comments:

MemoryTen claims ETP is mutually culpable for the "systemic administrative error" due to the lack of a timely monitoring visit during the project. Paragraph 2.13 of the Agreement states, "Responsibility: Contractor understands that it is directly responsible for the administration and delivery of all training funded under this Agreement."

MemoryTen also asserts that Paragraph 5.12 of the Agreement provides MemoryTen the opportunity to rectify the problem. The alternative MemoryTen identifies is an option at *ETP's sole discretion* to address a defect in performance or related problem. This paragraph states the Agreement may be terminated immediately at ETP's sole discretion if *misrepresentation* occurs by the Contractor. Furthermore, Paragraph 2.14 of the Agreement between ETP and MemoryTen states, "Contractor understands that any misrepresentation of material fact made by it or its agent to the Panel or ETP staff, whether set forth herein or otherwise, constitutes grounds for immediate termination of this Agreement."

As identified in the Audit Report and further discussed above in Item No. 3, this issue is not solely a *performance* problem due to insufficient training records, but also a *misrepresentation* of material facts regarding the *nature* and *quantity* of training. Thus, we continue to recommend that the Agreement be immediately terminated.

7. Contractor's Response:

MemoryTen states, "The majority of course titles recorded on the original MT rosters are accurate, contrary to the Audit Manager's conclusion. Actual training was conducted according

FINDINGS AND RECOMMENDATIONS (continued)

to the substance of the training, not under the title of Lean Manufacturing.” MemoryTen subsequently provided examples of MemoryTen’s business practices of visual mapping, cellular workflow design, and real-time inventory display (Examples 1, 2, and 4, respectively) to demonstrate the use of Lean Manufacturing and Manufacturing Resource Planning (MRP) at MemoryTen. In Example 3, MemoryTen stated employees would have indicated they received Lean Manufacturing training if ETP Auditors had identified more specific Lean Manufacturing topics such as “The 5 ‘S’s’.”

Auditor’s Comments:

The Contractor’s response confirms the course titles on the rosters are not actual course titles, but rather generalized topics. Thus they are not “...accurate according to the substance of the training...”. Title 22, CCR 4442(b)(2) requires training rosters identify the type of training and course title. Rosters should include the actual course titles for the training provided. In addition, the lack of specific course titles further supports the Auditor’s Comments included above in Item No. 3, which maintain that a *formal, structured* training program was *not* in place as represented to the Panel. MemoryTen does not dispute that no qualified subcontractor or MemoryTen trainer was used to provide Lean Manufacturing, ISO, or MRP training.

MemoryTen provided examples of its business practices to demonstrate the use of Lean Manufacturing and MRP at MemoryTen. We acknowledge that MemoryTen *may* have business practices which use methods and/or components of Lean Manufacturing, ISO, or MRP methodology. However, the use of these business practices (Examples 1, 2, and 4) is not evidence that formal classroom/laboratory training occurred as reported to ETP.

MemoryTen stated in Example 3 that *employees* would have indicated they were trained in Lean Manufacturing, if ETP Auditors asked more specific questions related to the “substance” of the training. However, the Audit Report identifies MemoryTen *Managers* and/or *Supervisors* did not state they had *provided* training in Lean Manufacturing, ISO, or MRP when questioned by ETP Auditors based on interview questions that were determined according to “course titles” as recorded on MemoryTen rosters. If the rosters had identified specific courses based on the “substance” of the particular training sessions, then auditor interview questions could have been developed accordingly. Furthermore, ETP Auditors did not specifically ask MemoryTen managers and supervisors if they

FINDINGS AND RECOMMENDATIONS (continued)

provided Lean Manufacturing, ISO, or MRP. Auditors asked what type of training was provided and Lean Manufacturing, ISO, or MRP were not identified, nor were any aspects of these methods as detailed in the Contractor's response. Given the Contractor's examples, however, we do acknowledge that some Lean Manufacturing, ISO, or MRP methods or techniques *may* apply to some aspects of MemoryTen's operation and *may* be referred to by the company managers and supervisors communicating with their staff. However, we continue to maintain that the training records do not contain accurate course titles according to regulatory requirements specified by Title 22 CCR 4442(b)(2).

8. Contractor's Response:

MemoryTen states ETP Auditors were provided the following items as secondary source documentation to support training was provided: "Lean Manufacturing VHS tapes, Training Manuals for Customer Service, Training Handouts, and Books used during training."

Auditor's Comments:

We acknowledge the Contractor provided items to support training was provided. However, as noted above in Item No. 3, we determined these items were not *credible* training materials and did not support formal class/lab training as reported to ETP was provided.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Minimum Wage Requirement Not Met MemoryTen payroll information shows that two Job No. 1 trainees did not meet the minimum wage requirement specified in the Agreement. We previously disallowed \$6,395 in training costs claimed for these trainees in Finding No. 1.

Section 3.4 of the Agreement between MemoryTen and ETP states, “All trainees must earn at least the Post-Retention Wage identified below for the county or region in which trainees are employed, on the first day after the retention period has ended.”

Section 3.4 identified that Job No. 1 trainees employed in Santa Clara County must earn a minimum \$14.02 per hour following the post-training retention period. The Agreement allowed the Contractor to include the dollar value of employer-paid health benefits to meet minimum wage requirements.

The table below shows the wage reported by MemoryTen, required wage rate, wage per MemoryTen payroll records, and employer-paid health benefits.

Trainee No.	Job No.	Reported Wage Rate	Required Wage Rate	Wage Rate Per Payroll Records	Employer-Paid Health Benefits	Total Actual Wage Rate
25	1	\$10.00	\$14.02	\$10.00	\$1.18	\$11.18
37	1	\$12.00	\$14.02	\$12.00	\$1.28	\$13.28

Recommendation MemoryTen should ensure all trainees meet minimum wage requirements before claiming reimbursement from ETP.

Contractor’s Response The Contractor conceded this audit finding as a “...payroll/administrative error.”

Auditor’s Comments Our finding and recommendation remains unchanged.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Ineligible Trainee Occupations MemoryTen claimed reimbursement for two Job No. 1 trainees who were not employed in occupations specified in the Agreement. We previously disallowed \$4,532 in training costs claimed for these trainees in Finding No. 1.

Section 3.13 of the Agreement between MemoryTen and ETP states, “Training shall be funded only for trainees working in the occupations approved by the Panel for each Job Number, as shown in Exhibit A, Chart 1.” The occupations identified in the Agreement for Job No. 1 did not include Chief Financial Officer or Director or any other titles identifiable as executive staff or senior level managers.

Employment information obtained from MemoryTen during our audit indicates that two Job No. 1 trainees were employed as members of the company’s executive staff and/or senior management team during their reported training and retention periods. Trainee No. 7 was employed as a Chief Financial Officer. Trainee No. 23 was employed as the Director of Information Technology. Thus, these trainees were not employed in occupations identified in the Agreement.

Recommendation MemoryTen should ensure all trainees are employed in occupations identified in the Agreement before claiming reimbursement from ETP.

Contractor’s Response MemoryTen conceded Trainee No. 7 was in an occupation ineligible for training per the Agreement.

MemoryTen disputes Trainee No. 23 was, “...given the title only to give him a sense of pride. He has no managerial role, authority, or capacity.” The Contractor further states this trainee has no employees to supervise, no hire or termination authority, no authority to impact employee’s pay or performance reviews, does not set company policies, does not sit on senior management committees, and has no specific impact on company strategies. MemoryTen states, “He is not an executive staff or senior level manager.”

Auditor’s Comments Our finding and recommendation remains unchanged regarding Trainee No. 7. ETP allows that Trainee No. 23 was employed in an eligible occupation under this Agreement based on the Contractor’s comments. ETP will not disallow costs regarding the occupation for Trainee No. 23. Trainee Nos. 7 and 23 continue to be disallowed in Finding No. 1 for unsupported class/lab training hours.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 – Contractor Not Entitled to Reimbursement for Administrative Support Costs	<p>MemoryTen, which is not a training agency, was incorrectly reimbursed for administrative support costs allocated by ETP for training agencies only.</p> <p>Title 22 California Code of Regulation, Section 4400 (z) states: "Training agency" means any public or private training entity, state or local school, or education agency that has been in existence for a minimum of two years preceding the application for panel funding, and has an established history of providing training and placement services to the public.</p> <p>The Agreement between MemoryTen and ETP provided for the hourly reimbursement rate to include an allowance for training administration. This reimbursement by ETP is allowable only for entities defined as training agencies. However, this Agreement provided funding solely for the retraining of the employees of MemoryTen, which is a privately owned company comprised of three separate business entities operating as one company at the same site sharing the same ownership. MemoryTen did not provide training and placement services to the public. Thus, MemoryTen was not entitled to receive additional reimbursement for administrative support costs as allocated by ETP for training agencies only.</p>
Recommendation	MemoryTen should not be reimbursed for administrative support costs allocated for training agencies only.
Contractor's Response	The Contractor states they made no representation of being a training agency, and that the application of the additional administrative costs paid are, "...an ETP administrative error and may be reversed at ETP's discretion."
Auditor's Comments	Our finding and recommendation remains unchanged. ETP concurs MemoryTen did not make representations of being a training agency, and MemoryTen was not entitled to the additional administrative support costs reimbursed.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 5 – MemoryTen is not a manufacturer. MemoryTen misrepresented its Contractor Not a Manufacturer operation as that of a manufacturer to the Panel for the purposes of obtaining an Agreement.

Title 22 California Code of Regulation, Section 4416 (a) states: “The Panel will not fund any retraining project, with the exception of Special Employment Training under *Unemployment Insurance Code Section 10214.5*, unless it first determines that the trainee jobs are threatened by out-of-state competition.” However, Section 4416 (b) allows exception for employers classified under the North American Industrial Classification System (NAICS) as set forth in subsection 4416 (i), which includes in its subsection (1) any NAICS classification in: Sector 31-33. Manufacturing Industry.

NAICS Sector 31-33—Manufacturing states, “The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.”

None of the three employers known for the purposes of this Agreement as MemoryTen have designated NAICS codes within Sector 31-33—Manufacturing. The assigned NAICS codes for MemoryTen's operations (423436 and 4431207) appear in Sector 42—Wholesale Trade and Sector 44-45—Retail Trade. Furthermore, information obtained by ETP auditors based on inspection of MemoryTen business facilities and interviews of MemoryTen employees support that no manufacturing is directly conducted by any of the group of employers known as MemoryTen. Information obtained by ETP auditors supports that MemoryTen is solely engaged in the wholesale resale and/or retail sales of various computer components.

However, representatives of MemoryTen stated in their application for funding and subsequent memo to the Panel that their industry sector was Manufacturing and repeated inaccurate claims that MemoryTen companies “manufacture” computer memory components. MemoryTen also inaccurately claimed it “...experienced an increase in competition from overseas manufacturers” (underline added for emphasis). Thus, MemoryTen misrepresented to the Panel its status as a manufacturer entitled to priority funding by ETP.

Recommendation MemoryTen should ensure all information submitted to ETP about the nature of its business operations is accurate. Inaccurate information may result in repayment of unearned funds, plus applicable interest, to ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 5 – Our comments below address the Contractor's comments relevant to the audit finding. Please refer to Attachment A for the complete Contractor's response and Auditor's Comments

1. Contractor's Response:

The Contractor states, "This is strongly disputed and has been covered in this response in previous sections." MemoryTen provided three Wikipedia articles defining manufacturing, and stated MemoryTen is in the Electronics Manufacturing Industry. The Contractor discussed their advanced packaging techniques, software systems, software, and database management.

Auditor's Comments:

We appreciate MemoryTen including in its response an expanded definition of manufacturing and information supporting that definition, as well as the additional facts regarding MemoryTen's business practices. Furthermore, we do recognize that a potential for misunderstanding did exist regarding the exact nature and extent of those practices during development of this Agreement. Based on that fact, we do revise our finding to state that incomplete facts were provided to the Panel, and that the finding that MemoryTen misrepresented its operation as that of a manufacturer to the Panel for the purposes of obtaining an Agreement is not fully determined.

However, we continue to maintain that North American Industrial Classification System (NAICS) guidelines, in conjunction with the physical and documentary evidence identified in Finding No. 5, do support our determination that MemoryTen is *not* a manufacturer, in the commonly defined sense, as presented to the Panel in the ETP 130 Panel Memo. Our finding is further supported by testimonial evidence from MemoryTen's President and Operations Manager.

MemoryTen states, "Ken Olsen, being the founder, has been the key driver to lead the company... He holds all legal corporate positions and authority (sole Shareholder, Chairman of the Board, sole Director, sole Officer in all capacities as Secretary and Treasurer, and sole signatory of all bank accounts for all companies in the MT Group)." Mr. Olsen is also the sole signatory for this Agreement. During ETP's interview of Ken Olsen on August 18, 2009, Mr. Olsen stated, "I'm not interested in manufacturing here." Further, in response to the statement by ETP staff, "You're not manufacturing in this building," Mr. Olsen responded, "No." During the Informal Exit Conference on September 9, 2009, Mr. Olsen reaffirmed that

FINDINGS AND RECOMMENDATIONS (continued)

MemoryTen was not a manufacturer during the Agreement.

Interviewee No. 6, MemoryTen Operations Manager and self-identified trainer, stated, "The manufacturing itself is outsourced... The actual electronic part of the build takes place outside of here." This interviewee also stated, "We're not a manufacturer."

2. Contractor's Response:

MemoryTen claims they were, "...explicitly told [by an ETP Account Analyst] that the company would be classified as a Manufacturer even if only parts of its processes conducted manufacturing, which it does in its industry... The Account Analyst summarized these findings in the ETP 130 report... This report has been available to the Audit Manager but apparently ignored in the Draft Audit Report. MT's classification as a Manufacturer was a decision made by ETP staff, with full knowledge of the above facts based on its activities." The Contractor acknowledges the NAICS code identified is correct, but states, "MT is a manufacturer based on its activities and had always accurately represented such."

Auditor's Comments:

MemoryTen did not provide any supporting evidence of ETP Staff's representation that MemoryTen was a manufacturer. Further, the ETP130 Panel Memorandum (ETP130) referenced by the Contractor is a document representing the Contractor to the Panel. ETP Staff may have assisted the Contractor in by completing ETP130, but all information included in the ETP130 is based on facts and information provided to ETP staff by the Contractor during the application for ETP funding and the subsequent development of the Agreement. The Contractor should note the ETP130 was not ignored in the Audit Report, and in fact was referred to as the "...subsequent memo to the Panel..." which documents MemoryTen's misrepresentation to the Panel.

3. Contractor's Response:

MemoryTen states, "The Draft Audit Report concludes that since MT is not a Manufacturer (Pg.2, Par 3), any 'Lean Manufacturing Training' is disqualified, since such manufacturing type training cannot be provided to a non-manufacturer." MemoryTen then provides an explanation of Lean Manufacturing training. The Contractor concludes, "To suggest that Lean Manufacturing skills apply only to Manufacturers is an ignorant statement..., and respectfully

FINDINGS AND RECOMMENDATIONS (continued)

meant with no intent to be offensive.”

Auditor's Comments:

Our report does *not* conclude Lean Manufacturing training cannot be provided to a non-manufacturer, nor does it disallow training based on this premise. However, our report does state that Lean Manufacturing, ISO, and MRP training was approved by the Panel based on *MemoryTen's* misrepresentation that it manufactures memory chips, thus its employees required *formal* training in manufacturing skills.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 6 – Trainee hourly wage rates reported by MemoryTen on invoices submitted to ETP were inaccurate. As a result, the Contractor did not comply with Agreement reporting requirements.

Inaccurate
Reporting

Section 4.3 of the Agreement between MemoryTen and ETP states, “Contractor must report the actual hourly wage paid for each trainee at the completion of retention. This information is used by ETP to verify full-time employment.”

We documented actual trainee wage rates based on payroll documents provided by MemoryTen for 17 sample trainees. Trainee wage rates reported by MemoryTen varied by 5 percent or more from actual wage rates for 12 of the 17 trainees (71 percent).

Recommendation MemoryTen should ensure all trainee data submitted to ETP is accurate and complete. Inaccurate or incomplete data may result in repayment of unearned funds, plus applicable interest, to ETP.

Contractor's
Response

The Contractor conceded this audit finding as an administrative error.

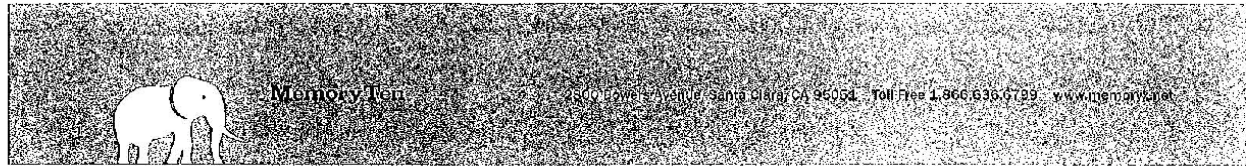
Auditor's
Comments

Our finding and recommendation remains unchanged.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 7 – Payments to Subcontractor Exceed Maximum Allowable Administrative Costs	<p>The Contractor exceeded the maximum allowable payment to the subcontractor for administrative services. Therefore, we assessed an administrative finding for not complying with the Agreement between MemoryTen and ETP.</p> <p>Section 4.4 of the Agreement between MemoryTen and ETP states, “The administrative costs funded by ETP shall not exceed 13% of payment earned.”</p> <p>According to records provided by MemoryTen, MemoryTen paid the subcontractor, Sallyanne Monte \$7,250 in administrative fees for this Agreement. Based on the total amount of training hours reported by MemoryTen to ETP, maximum allowable administrative costs should not exceed \$17,197 [(\$132,228 x 13 percent)]. However, based on allowable training costs, the maximum allowable administrative costs would be \$0 [(\$0 x 13 percent)]. Thus, based on the results of this audit, MemoryTen overpaid Sallyanne Monte for administrative services by \$7,250.</p>
Recommendation	MemoryTen should ensure payments to subcontractors comply with subagreement payment provisions and do not exceed maximum allowable administrative costs.
Contractor's Response	The Contractor states, “This finding is only valid and applicable based on final adjustments and only to that extent. Commensurate corrections will be made by MT in the future if necessary.”
Auditor's Comments	MemoryTen does not dispute the factual accuracy of the audit finding. Our finding and recommendation remains unchanged. The Audit Report is based on the current status of the Agreement and the results of our audit.

ATTACHMENT A – Contractor's Response to Draft Audit Report



To,
ETP Audit Unit
Attention: Stephen Runkle
1100 J Street, 4th Floor
Sacramento CA 95814-2827
Phone: 916.327.5640

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

Date: November 27, 2009.

Subject: Memory Ten, Inc. (MT) response to ETP Draft Audit Report published October 27, 2009
Re: Agreement No. ET08-0428.

Following is our response to your Draft Audit Report ("Draft Audit Report"). Our response is structured as follows:

- A. Preliminary observations and comments.
- B. Memory Ten, Inc. Company background.
- C. Our specific responses which correspond directly to the structure of the ETP Draft Audit Report and can be directly linked to the audit findings, specific issues and paragraphs.

Namely:

	<u>Section</u>	<u>Draft Audit Report Pg #</u>
1.	Background	2
2.	Objectives, Scope and Methodology	4
3.	Response to Findings by Number	7

A. Preliminary observations and comments

The following are our concerns with the Draft Audit Report:

- Mistaken or simplistic assumptions.
- Factual errors in the Draft Audit Report.
- Erroneous interpretations and derived conclusions.
- Failure in purported compliance to Government Auditing Standards.
- Unawareness by the Audit Manager of Lean Manufacturing techniques, tools and methodologies in modern high technology manufacturing entities.
- Decisions by the Audit Manager to subjectively ignore information provided.
- Pejorative presumptions by ETP audit staff of guilt on the part of MT of some wrongdoing based on hearsay statements by an ex-employee of MT.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

- Failure to use early pre-emptive corrective monitoring procedures to detect administrative errors by ETP.
- Failure to provide alternative cure periods for administrative error findings as per the agreement which would have provided reasonable remedies.
- Serious allegations by ETP of malfeasance on the part of MT without demonstrating the key elements necessary to reach such conclusions.
- Clear indications of Audit Manager bias and personal prejudice.
- Failure to understand even a simple definition of modern Manufacturing.

Pre-conceptions of Auditors' Attitude and Behavior.

The ETP Audit Manager scheduled a preliminary on-site audit visit with two (2) weeks prior notice to MT on August 17, 2009, extending until end of business on August 18, 2009. The Audit Manager insisted that the audit must take place only on that date with no reasonable input for flexibility in coordinating the schedules of various staff needed by MT to be prepared for the audit. *MT requested only 2 additional weeks to prepare for the audit given summer vacations schedules of MT staff.*

The ETP auditors' attitude appeared to be influenced by some predisposed presumptions of guilt or wrongdoing by MT. This was evident in their attitude, behavior, tone, demeanor, sharp or curt responses to issues, and a general sense of hostility, extended not only to MT management but to MT staff engaged in the audit process. MT has considerable evidence of incidences of such conduct by the ETP Audit staff – a very clear lack of professionalism on the part of the Auditor(s). Such behavior was contrary to common notions of 'innocent until proven guilty' under traditional American culture.

At the completion of the inspection of the records, at the end of business on August 18, 2009, the Audit Manager indicated that an "Informal Exit Conference" was the next step and that it would take him a few weeks to present a draft report. MT provided the Audit Manager with certain dates (August 28 – September 10, 2009) where key members of the MT Audit team would be unavailable due to pre-scheduled business and/or vacations. On September 3, 2009, the Audit Manager scheduled an "Informal Exit Conference" meeting for 10:00 am September 9, 2009 with full prior knowledge that this would cause a schedule conflict for MT. MT reminded the Auditor that a key MT team member would be available on or after September 11, 2009. MT requested that the Informal Exit Conference occur on September 11, 2009, two (2) days later. The Audit Manager was adamant that this conference be held on September 9, 2009 and refused to accommodate any discussion of minor changes in the scheduled date or even the time. MT felt it was imperative to have their ETP administrative sub-contractor as their assigned agent and representative at this audit meeting. MT has a right to have its selected key team members present and has been prejudiced and handicapped in the audit process by forced exclusion of its key audit response team member. This purposeful unnecessary hastiness and exclusion of MT's representative was an act of bad faith. It certainly communicated an adversarial role by the audit staff based on predisposed opinions.

This Informal Exit Conference was a 45 minute (approximate) one-way conversation by the Audit Manager to an incomplete assembly of MT's audit response team. Reasons for excluding

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

the MT representative at issue were omitted from discussion at the meeting. At this Informal Exit Conference on September 9, 2009 the Audit Manager promised a Draft report within 7 to 10 days.

The Draft Audit Report arrived at MT's offices on October 24, 2009, six (6) weeks later than committed. This contradicted the Audit Manager's previous claim that the "Informal Exit Conference" and audit process was a critical and priority matter that needed to occur very shortly on September 9, 2009 and could not be delayed for a mere 2 days until September 11, 2009.

We note that, as part of the Draft Audit Report, the Audit Manager chose to highlight (on page 9) spelling errors in an internal MT memo written to and only for MT's internal file, not addressed to ETP, and not part of any required compliance procedures. We find such reporting in the Draft Audit Report to be trivial, small-minded and colored with personal bias. We note that it is not the function of the Audit Manager to make spelling corrections in an MT internal memo.

The Audit Manager has indicated that if MT's response to the Draft Audit Report is not sent to the Audit Manager within 30 calendar days, a final audit report will be issued with wide public publication.

Certainly, MT was not given any prior documentation as to the timings of such audit processes as part of any contract and has not agreed to any such process and consequences. Neither has MT made any unreasonable requests regarding such deadlines. MT is not averse to reasonably negotiated deadlines as part of the audit process. Accountability for strict deadlines and commensurate performance must be applicable in parity to both parties in any audit process.

We urge a reasonable attempt by the ETP organization to amicably arrive at a final audit report which does not reach to the level of finding spelling errors in personally motivated targeted documents of any party. We are particularly offended that the ETP Audit Staff extended their prejudicial attitude to many of the Company's employees, suggesting accusatory past behavior on their part and reserve all rights on this issue given the auditors' impact on MT employees. MT has a right to defend its employees from such possible tortuous conduct.

B. Memory Ten, Inc. Company Background

Memory Ten, Inc. commenced operations in 1997 (originally formed as Compass Memory, Inc.) and formally changed its name in 2005 to 'Memory Ten, Inc.' for branding and marketing reasons.

The company literally started from the kitchen table of founder and entrepreneur Ken Olsen, a resident of California and has grown to over 50 employees with a \$40 million run-rate in sales (as of October 31, 2009). The company also operates affiliates which were acquired companies some years ago, "Oempcworld" and "We Love Macs", operating under one corporate operating umbrella and employees of all three companies are covered under the subject ETP contract.

With a proposed acquisition of a memory chip manufacturer based in Southern California, (the transaction is still pending subject to close as of end of this year), the combined group of companies will have over 75 California based employees.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

The Company and all affiliates, hereinafter called the "MT Group" or simply "MT", have consistently had their financial statements fully audited or reviewed by their external CPAs, Abbott, Stringham & Lynch, 910 Campisi Way, Campbell, CA 95008, with no audit findings ever suggesting malfeasance of any sort. Despite being a private group of companies, with no legal or IRS regulatory obligation to raise their financial statements and internal control processes to an "audit" or "review" standards of audit compliance by independent CPAs, the MT Group has consistently sought such practices simply because it makes good business sense and brings standards of discipline into their financial processes.

Company Culture

Ken Olsen, being the founder, has been the key driver to lead the company to over \$50 million in sales and 75 employees in 12 years. He holds all legal corporate positions and authority (sole Shareholder, Chairman of the Board, sole Director, sole Officer in all capacities as Secretary and Treasurer, and sole signatory of all bank accounts for all companies in the MT Group). This company history has had a dramatic impact on its culture and the behavior of all employees.

Ken Olsen is also the key "technical memory chip specialist", chief marketer, and database/software strategist. He has run other memory chip companies since 1986. The key issue is that because so much knowledge literally "sits in Ken Olsen's head", the key strategic impetus for the MT Group for the past 5 years has been EMPLOYEE TRAINING. Despite many strategies and tactics, the key challenge for the Company remains to download training and decentralize decision-making (all decisions currently end up flowing "upwards" to Ken Olsen), which means to employees. This is a highly technical, complex and sophisticated company in a technically complex electronics industry.

Product knowledge of the database of thousands of memory chip specifications and performance parameters is the key knowledge determinant in this industry. Ken Olsen remains committed to imparting his knowledge and strategies to employees and others and fostering new entrepreneurs. Armed with such knowledge and training, employees can make themselves personally enriched to the point of financial independence. The MT Group of companies can readily demonstrate such commitment to their employees and we invite ETP to discover this in the practices and strategies of the MT Group.

One key audit finding in the Draft Audit Report (pg 8, 9, under sub-title "Audit Sample") is that the training rosters were signed by Ken Olsen and General Counsel. This occurred because in the culture of the company, decisions and documents flow to "the central authority" Ken Olsen. Everyone assumed that this would actually be more helpful, more authoritative, more validated, more authenticated and even more compliant to some "formal" external requirements (such as ETP Audits).

Another rather obvious conclusion is that this was a systemic administrative error, made once, (that is, a decision made by an administrative employee) that it was somehow "better" that the President and General Counsel, as the "authority figures" in the MT Group, sign all the rosters as they do many documents of legal significance.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

If an independent party were to look “globally” at what systemically happened with the ETP administrative procedures, it is simple and obvious. Everyone honestly thought it was “better” that Ken Olsen sign all documents.

If an independent auditor and observer (without any preconceived notions and hunting for specific facts to retrofit into those notions) with an open mind were to examine the evidence of the systemic error, examine secondary evidence of events supporting the substance of the training and not just the titles, consider evidentiary sources such as accounts payable vouchers and documents of legal significance, the conclusions would be completely contrary. MT can easily demonstrate that over 80% of the training has taken place in substantial conformance with the contract. The other 20%, whilst the training was conducted, requires further analysis. Even this may be mitigated by an examination of additional secondary evidentiary sources.

C. Specific responses corresponding to the Draft Audit Report

1. Background

Draft Audit Report Pg. 2, in par. 3, the Draft Audit Report correctly states that an essential part of the ETP training was to be in Lean Manufacturing. However, later in the paragraph he concludes that “Memory Ten is not a manufacturer”. The conclusion is that Lean Manufacturing training cannot be applied to a non-manufacturer.

Is Memory Ten a Manufacturer?

A quick search for “manufacturer” on ‘Google Search’ might be a beginning point for a foundational discussion on what is a “manufacturer”. (Google Search result for such definition attached herein, Wikipedia definition).

To quote the attached Wikipedia attachment directly “.....Modern Manufacturing includes all intermediate processes required for the production and integration of a product's components.”

MT is a memory chip manufacturing facility providing integration of design, engineering, prototyping, operating software integration, recycling, repair, assembly and distribution of all types of memory chips across multiple industry customers. Such customers may be wholesalers, retailers, various end users including corporations, Government(s) (Federal, State and Counties), schools, non-profits and the military, GSA (General Services Administration) and individuals.

MT departments and functions include:

- Design & Engineering
- Programming
- Assembly
- Quality Control
- Recycle/repair, including cleaning
- Purchasing

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT

DEC. 07 2009

TRAINING PANEL

- Receiving
- Product testing
- Inventory control
- Packaging
- Shipping
- Accounting
- Human resources
- Legal
- Fraud control
- Order Processing

Memory Ten Manufacturing Facts:

We attach a Wikipedia article on the Electronics Manufacturing Industry (Exhibit C) which describes the specific industry in which MT operates in. Of these activities, the process flow is as follows: MT directly provides it's internally developed designs or purchased designs as the first step in the process to the next stage of component and PCB manufacturing.

Memory Ten's activities within its operation include receiving raw memory chips and doing the electronics design activities.

MT subcontracts the component and PCB manufacturing step in the process, primarily because of the specialized environmental and chemical processes needed there. MT directly performs prototype testing for the designs and configurations it has developed or provided to the component subcontractor.

MT is directly involved in the production testing part of the process. Significant portion of MT's activities are directed towards the repair, reuse, recycling and cleaning of used memory chips. Over 35% of MT's 20,000 sq. ft. facility is dedicated to purchasing, warehousing, testing, cleaning, re-configuring, re-programming of memory chips, re-packaging and shipping of used extracted memory chips from about-to-be scrapped computer terminals, printers, routers and other hardware. Such activity is a key part of environmental recyclability and sustainability initiatives throughout Silicon Valley and particularly in this industry.

Advanced Packaging Techniques:

MT is experimenting with Clam Shell (Thermal flow) packaging to meet current retail security demands with:

- Upgraded Thermoatron: The Company anticipates a 3% reduction of overall packaging costs, a 2% reduction in customer re-work, and a 3% increase in efficiencies.
Investment: \$68,000.00 (2 hrs of training including in current contract.)
- Thermal Forming machine was purchased to develop molds and the process. Packaging material costs are a significant cost element in the production cost.

This is the physical aspect of integrating the product's components.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT

DEC 07 2009

TRAINING PANEL

Intermediate and Advanced Software Systems.

Following is a description of MT's software activities which integrate the memory chips for final distribution to customers:

1. CRM implementation (CRM = Customer Relationship Management)
Chat line, customer database, cloud database for distributing selected proprietary data to customers, outsourced customer service from India which is managed by CA employees to provide 24 hour customer care worldwide.
2. MRP implementation (MRP = Manufacturing Resource Planning)
3. Shop Floor and Barcoding

Software:

A key part of the process in the Electronics Manufacturing industry is re-configuration and integration of the related operating software on the raw memory chips. As a metaphor, a raw memory chip without its operating software is as useless as a personal computer without an operating system software loaded onto its hard drive. This is not to be confused with application software such as Microsoft office, etc. MT's activities deal ordinarily with operating software added to the memory chip.

Database Management

In addition, MT's most significant value-add to the memory chips comes in its proprietary database of memory chips which has taken a decade to develop. This database is now an industry standard being licensed to other distributors and customers. To elaborate: memory chips come in literally thousands, if not tens of thousands of sizes, capabilities, specifications and performance parameters, compounded by various permutations and combinations of these parameters. MT's competitive edge and a key strategic attribute is the strategic design of this database available on its website: www.mcmemory.net. This is MT's "secret sauce", if you will. We cannot discuss MT's database "secret sauce" in depth here for obvious competitive reasons, but product database training is one of the central training components of the ETP contract here. We indicated earlier that it is imperative for MT to "download" (if you will) such training to MT's employees from the "founder's head".

At the on-site audit date of August 18, 2009, the Audit Manager was invited several times to attend a brief demonstration of MT's software, database configuration and other technical parameters at a terminal. He declined such a demonstration. We think that having no understanding of this key component of the Electronics Manufacturing industry creates a void in the audit. It was an intentional overlooking of key facts about the substance of the training delivered and then using this void to generate a contrary audit finding.

ETP Site Visit:

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

Prior to the inception of this ETP contract, our assigned ETP Account Analyst conducted a site visit at MT. Such site visits are mandatory to commence development of any new ETP training project. The Account Analyst used this site visit to meet staff at MT, conduct a walk through, overview operating and business processes and learn about MT's training needs. Rest assured the Company's cultural issues about the need to download product and database training from the President to various employees were also discussed at that time.

The Account Analyst observed MT's Electronics Manufacturing, Recycling, testing, operating software and operations. MT was explicitly told that it would be classified as a Manufacturer even if only parts of its processes conducted manufacturing, which it does in its industry.

Based on MT's ACTIVITIES, the ETP analyst correctly classified MT as an assembly manufacturer.

The Account Analyst summarized these findings in the ETP 130 report which was presented to the ETP panel for eventual approval of this ETP training project. ETP 130 (attached) describes MT's activities and corroborates MT's position in this response document and demonstrates how MT was classified as a manufacturer at that time. This report has been available to the Audit Manager but apparently ignored in the Draft Audit Report. MT's classification as a Manufacturer was a decision made by ETP staff, with full knowledge of the above facts based on its activities.

We particularly note here that ETP's assigned Account Analyst was a courteous and open minded individual, a fine and professional field representative for the ETP organization.

NAICS Classification System

This classification system for MT's industry code was developed by MT in corroboration with the Federal Government Department tasked with such activity in 2003/2004. MT held extensive discussions with the appropriate authorities who made the final determination of classification. For this industry, the NAICS classification is based on three (3) criteria:

- By Activity.
- By Product Volume (i.e. Quantities of memory chips shipped).
- By Sales Dollar Value.

Around 2004, MT's product shipment volume slightly exceeded 50% in the wholesale category and for the retail category, sales dollar value was nearly 70%. Accordingly, the Federal Government surveyors classified MT's business in the Wholesale and Retail NAICS codes based on product volume and sales dollar values.

Our Industry Classification system 'NAICS' codes – 423436 and 4431297, which are in Sector 42 – Wholesale Trade and Sector 44-45 Retail trade, respectively, were disclosed to our assigned ETP Account Analyst and has always been available to ETP staff. There has been no change in MT's NAICS classification over the years.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

The ETP Draft Audit Report now disingenuously seeks to declassify MT as a Manufacturer based on its NAICS codes, which were based on entirely different criteria. We ask some simple questions: Can the Audit Manager please clarify what criteria he arbitrarily chooses now to determine a "Manufacturer"-- Activity, Product Volume or Dollar Volume? Why is this decision process not disclosed to MT? Why was the classification made on MT's activities at the inception of the project but the NAICS classification is cited now as a contrary argument?

The Audit Manager's allegations of any misrepresentation by MT about its process activities or any other facts on this subject (or on any other subject, for that matter) are vociferously disputed in this response. MT is a manufacturer based on its activities and has always accurately represented such.

LEAN MANUFACTURING TRAINING

The Draft Audit Report concludes that since MT is not a Manufacturer (Pg.2, Par 3), any "Lean Manufacturing Training" is disqualified, since such manufacturing type training cannot be provided to a non-manufacturer.

Following is some background on "Lean Manufacturing". This is a term originally involved in manufacturing sectors, partly using Japanese techniques of "Kaizen" (Continuous Improvement) as well as work developed by Deming in North America.

- Lean manufacturing refers to a methodology of practices designed to identify value added activity and eliminate wasteful activities in a process, resulting in increased productivity (see attachments herein).
- Lean Manufacturing Techniques are applicable to all types of businesses (not just manufacturers) and in all functions of the business (not just manufacturing processes). In fact, "Lean Manufacturing Techniques" are now being used in office environments such as accounting and law firms, Insurance companies (claims processing) and even *hospitals*.
- Lean Manufacturing practices can improve an administrative process (such as generation of an invoice) as effectively as it can improve a widget passing from Mfg. Point A to Point B.
- MT has implemented this in:
 - Value Stream Mapping (VSM) – identifies value added activity (what the customer is willing to pay for) and identifies wasteful activity (non-value added) which will later be eliminated using 5S, Kanban and Kaizen techniques, in a specific area of the business, area by area and then at a deeper level process by process
 - 5S – sort & clean
 - Kanban – labeling system and workflow integration
 - Kaizen – rapid improvement workshop in a specific area of the business – allows immediate changes and experience immediate results (e.g.: lean the SD Card area for better flow)

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

- In fact, at the point of hiring, each employee at MT is given the book “Gemba Kaizen” authored by Masaaki Imai, often considered the “Bible” of Lean Manufacturing.
- Some educational Lean websites :
 - http://en.wikipedia.org/wiki/Lean_manufacturing
 - <http://www.maintenanceworld.com/Articles/rinkJ/Lean-Manufacturing.html> - this one speaks to Lean concepts applied in ALL functional areas.
 - http://www.industryweek.com/articles/lean_accounting_focus_on_the_meaning_of_numbers_13352.aspx article on *Lean Accounting*.
- Lean is a series of events and experiences for employees that go deeper and deeper into the business starting globally in an area or a department and then progressing to individual processes and then at increasingly micro levels.
- One does not have to be a manufacturer to benefit from Lean Practices.
- We attach an Exhibit, labeled “Agile Manufacturing” from Wikipedia to demonstrate the terminologies now being used in modern business – Flexible Manufacturing, Agile Manufacturing and Lean Manufacturing.

The Wikipedia definition speaks to “Agility (Agile Manufacturing) which has four underlying components; the first three are:

1. Delivering value to the customer
2. Being ready for change (new products)
3. *Valuing human knowledge and skills;*

... These three are considered important elements of Lean Manufacturing as explained in the attachment.

We at MT, and also at ETP, this item 3 is the strategic impetus for the missions of both organizations.

To suggest that Lean Manufacturing skills apply only to Manufacturers is an ignorant statement (the term ignorant implying a lack of knowledge), and respectfully meant with no intent to be offensive.

The Draft Audit Report (pg 9) suggests that MT misrepresented material facts regarding the nature and quantity of the training. There has been no misrepresentation of the nature of the training as indicated in this section here.

Draft Audit Report Pg. 2 Par. 4

The Draft Audit Report claims that “Memory Ten claimed to the Panel that the Institute for Business Performance of San Jose had been retained to provide formal training courses ...” This is simply not true and a blatant misstatement.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

Vendor 'Institute for Business Performance' – was listed only as a “potential vendor” for Business Skills, Computer Skills and Manufacturing Skills – (on ETP 100D form). MT was not required nor obliged to utilize this vendor. This vendor was listed as the local Community College Workforce Education Center as a potential vendor. Vendors are only hired on an as-needed basis and a need for this vendor was not identified during the project. MT did not indicate Lean Manufacturing for this vendor. The Draft Audit Report's misstatement here is made out of context.

Draft Audit Report, Pg 3.

Issue concerning MT's ex-employee

We are aware of this former employee's name and for obvious privacy reasons, need not recite it here and shall even disguise any information as to gender. Former employee, clearly disgruntled for some reason, such reason(s) exactly unknown to MT, resigned on 5/8/2009. This ex-employee's resignation letter indicated: “I have been through a lot of emotional stress”. “My constant struggles to juggle my daily duties and more have been difficult.” The ex-employee had been employed with MT from just slightly more than a year in the accounting department as an accounts payable processor. At one time the Company did forward the ex-employee a “pay advance” of \$500 since the ex-employee was short on cash, a common practice by the Company to assist its employees if they are in financial distress.

The ex-employee had not indicated to any other employee or MT's Human Resource Department what ex-employee's “emotional stress” had been, and neither was the ex-employee asked by anyone.

MT has considerable evidence with ex-employee's superiors and co-employees to demonstrate that the ex-employee had received considerable training for ex-employee to do ex-employee's job and seemed to be performing adequately.

Purported Ex-Employee's Statements in bullet points, Pg. 3 of Draft Audit Report

There are 7 “bullet points” and each is addressed numerically as follows:

1. That is categorically false. Employees did receive the training and it was all documented. How could an account clerk have access to broad Company knowledge about all ETP and non-ETP training and how it was delivered to all Company employees? It is an overgeneralization that should have no credibility.
2. False. In fact, employees were told quite the contrary by MT management: “Specifically - don't lie” “Do not falsify anything”. We have several employees who will attest to those specific words.
3. This was a systemic administrative error by an administrative employee at MT, as indicated earlier. This administrative employee's responsibility was to verify the hours and collect signatures.
4. Simply a false allegation. All training recorded was either in structured class/lab training with a trainer or only at workstations where software applications are available. This is the only possible way to deliver the training in the physical setting available.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

5. True. Our ETP contract allows for training of employees in a range not to exceed 200 hours. Employees were told and encouraged to seek out opportunities for up to 200 hours of training each, if applicable or needed. MT ran many courses on the ETP curriculum and we were further under contract with ETP to strive to that objective. There is nothing wrong with such encouragement and direction and MT is at a loss to understand any negative findings here. It appears to be another attempt to shed a single fact out of context in a negative light.

6. Yes, employees were coached. No requests were made to employees to make any false statements. Some employees have reached 200 hours and are still in need of more training while other have received less based on need. Yes, the Company stands on its commitment for continuous training for all its employees.

When an external audit occurs, employees often have questions and fears such as "Am I in trouble? Who are these people coming to visit? Will I be interrogated? I have never gone through an audit. Will I lose my job?" Company coaching is normal, empathetic and seeks to alleviate such employee fears. Again, facts are being taken out of context in the Draft Audit Report to suggest that "coaching" was a manipulative Company activity. We take particular offense to this prejudicial view in attempting to take a truly genuine concern for employees by MT to help allay their fears. The Draft Audit Report attempts to disingenuously shed this coaching in a negative light.

7. Training occurred over a 12 month period. Employees were reminded about the structure and nature of the training that had taken place. Some of the employees stayed during portions of training in which others were dismissed based on the employee training need and modules being covered. This is within ETP guidelines. What was really an innocent and rather extensive conversation has been subtly misconstrued in the Draft Audit Report with one single statement taken out of context. Employees were explicitly repeatedly asked to tell the truth by MT management.

2. Objectives, Scope and Methodology

We understand this section and shall address them in context of the specific audit findings.

3. Findings

Pg. 8. The Audit Manager took a random sample of 15 (and a non-random sample of 4) class/lab training hours in the rosters. He then, through extrapolation found a 100% error rate in the record keeping because the President signed all the rosters. The total population size of individual roster time training hours is in several hundreds, possibly exceeding 1500 – 2000 individual entries. The Audit Manager then concludes that since the entire population of documents are incorrectly signed, they are all disallowed.

Earlier in this report, under the section of Company Culture, we explained how this systemic administrative error arose. Because it is a systemic error, there is no need to do statistical sampling. Had the Audit Manager picked a random sample of four (4), or even two (2), or any number, he could have arrived at the same extrapolative conclusion. Alternatively, had he tripled the random sampling size to 45, would his statistical testing be three (3) times more statistically valid?

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL

Sampling and statistical techniques are used when there is some systematic cause to be measured, not an underlying systemic cause. The statistical sampling did not even state the specific sampling objective or why this sampling methodology was applicable or relevant --- a very basic and standard procedure of statistical sampling. No 't' or 't' test was presented to determine if this sample size even had statistical significance. There is no mention of 'standard error' in the results. It is simply an irrelevant application of statistical methodology, shrouded by a false aura of credibility because the Draft Audit Report claims it complies with Governmental Auditing Standards. We challenge the application of this methodology to the audit objective and given this situation. Any and all derived conclusions from this section should be dismissed for lacking analytical rigor.

Finding No. 1

Unsupported Class/Lab Training Hours.

Audit Sample The irrelevant sampling methodology used in the site visit by the audit team has been addressed earlier in this response and should be simply disposed of.

Draft Audit Report, Pg 9, Par. 2

The Draft Audit Report alleges that MT misrepresented material facts regarding the nature and quality of the training. That is simply false.

Draft Audit Report Pg. 9:

Section: Original Classroom/Laboratory Training Roster Not in Compliance.

MT class/lab rosters do include valid instructor signatures. The president personally did over 50% of the training and he was the instructor. So did the CFO and other supervisors. Ken Olsen, President, is the de-facto supervisor of all employees at MT, as explained before, and MT has met this requirement under Par.5.8.2 of the ETP/MT contract (requiring employees' supervisor signature and that the trainees completed the hours of training). Other supervisors in the company did provide the remainder of the requisite training.

The reasons for this systemic administrative error of the president signing have been explained earlier under section B, Memory Ten, Inc., Company Background. In fact, there was direct supervisory and management control and oversight on all rosters by the Administrative Manager and the President.

The General Counsel's signature was only for audit verification purposes and this was explained very clearly to the Audit Manager.

Additionally and very critically, ETP projects are required to be monitored during the project. An ETP analyst visited MT before the training project inception and after all of the project hours had been completed and submitted electronically. There was no monitoring, supervision, coaching or even administrative oversight by ETP during the project. Had ETP done its requisite monitoring visit and oversight during the progress of this project/contract, this systemic

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT

DEC 07 2009

TRAINING PANEL

administrative error would have been easily caught and remedied. Par. 5.12 (ETP/MT Agreement) gives MT an opportunity to cure this defect or problem within 30 calendar days if caught early in the term of the project with the ETP monitoring visit. There is mutual culpability by ETP and MT in this administrative error by ETP's omission of a timely monitoring visit.

Draft Audit Report Pg 10 (2nd Par.)

The majority of course titles recorded on the original MT rosters are accurate, contrary to the Audit Manager's conclusion. Actual training was conducted according to the substance of the training, not under the title of Lean Manufacturing. To illustrate some examples:

Example 1.

MT has created a system for all documents in the company to be centrally placed on one 12'x12' wall to track the flow, inventory of documents, and accountability of work flow and document backlog to make it visual to all employees. This is called visual mapping, value stream mapping, a 'dashboard' of work in the Company, and one of the KEY "5 S's". These are all techniques of LEAN MANUFACTURING. The employees learn the underlining substantive techniques, but are recorded on ETP training rosters as LEAN MANUFACTURING. The auditor asked the employees: "Did you learn LEAN MANUFACTURING"? Employee answer: "No". An outside observer would have seen the 12' x 12' wall, illustrating the application and training of the underlying techniques and training of LEAN MANUFACTURING in the workplace. The Draft Audit Report makes no observation of these activities.

Example 2.

An important technique of LEAN MANUFACTURING is 'Cellular Workflow'. A 5-minute tour of the MT facility would make it evident that over 70% of the employees sit in groups of 4-5, in workstations organized in circular cellular design so that the out-basket of one employee workstation or desk is the in-basket of the next. This is called Kanban. To re-emphasize, this is cellular workflow design. All workflow, physical reorganization, group leader re-assignments, computer workflow, computer and database security, procedures and commensurate TRAINING is organized to coordinate with such cellular design and Kanban. The employees learn it as workflow design, Kanban or cellular or even some combination of such labels. The techniques are visible and obvious. All such training is called LEAN MANUFACTURING on the ETP rosters.

The Draft Audit Report makes no observation of these substantive activities.

Example 3.

The 5 "S's" are a key component of Japanese work methodology. They stand for:

Seiri – Sorting
Seiton – Straighten
Seiso – Sweeping
Seiketsu – Standardizing

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT

MFC, 07/2009

TRAINING PANEL

Shitsuke – Sustaining the discipline.

At MT, each employee is trained on these principles applicable to his/her workstation/ desk. Weekly “housekeeping” audits by other employees are conducted to ascribe 5 “S” scores to each workstation to sustain the discipline. All such training is called LEAN MANUFACTURING on the rosters. The training is applicable and individualized to each employee/employee group workstation(s). If the employee is asked: Did you get “LEAN MANUFACTURING” training? {as the Audit Manager did ask in his attempt to obtain “secondary” evidence from employee interviews} he would have received an answer of “No”. Had the more incisive question been asked: “Do you know the 5 ‘S’s’ and how do you apply them to your job”, employee answers would be much more accurate and descriptive of the true value of training delivered.

Example 4.

In the center of its office, MT displays a large TV-type monitor with a real-time display of current inventory quantities, buying and selling prices for memory chips, incoming orders for thousands of memory chip part numbers and specifications on its database (the “secret sauce” alluded to earlier in this report). This real-time rolling display (much like a stock market tick-report) has taken MT hundreds of thousands of dollars and over a decade to develop. MT has invested an enormous amount of employee training to make this happen. Employees know it as our real-time inventory display. All the training on ETP rosters is recorded as MANUFACTURING RESOURCE PLANNING, which is what it is. The Draft Audit Report considers this an audit finding of inaccurate course titles.

The point MT is trying to make here is that we have delivered the LEAN TRAINING in substance, not just in title, and is particularized to the actual technique to be applied in the workplace. Any audit seeking secondary evidence of the training actually must look to the substance and not cherry pick language to be retro-fitted into pre-conceived notions. Employees think of their training under different and particularized/individualized training titles and subtitles unique to their jobs.

Draft Audit Report Pg. 11

Titled “No Secondary Source Evidence of Training Obtained”

The Audit Manager was given:

- Lean Manufacturing VHS tapes
- Training Manuals for Customer Service
- Training Handouts
- Books used during training.

During his worksite tour, we are not aware if he observed the cellular workstations, real time inventory virtual monitor, Company “dashboard” and LEAN MANUFACTURING tools such as 5 ‘S’s in real-time application. We know he declined to take a virtual tour of the proprietary software and database. All of these facts were also omitted in the Draft Audit Report.

Finding No. 2.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

MT concedes this finding as a payroll/administrative error.

Finding No. 3.

MT concedes that the Chief Financial Officer, titled Trainee No. 7, is an occupation unqualified under the agreement. We dispute the finding of Trainee No. 23 titled "Director of Information Technology". The fact is that this employee is given the title only to give him a sense of pride. He has no managerial role, authority or capacity. He is the "techie" in the business. He has no employees to supervise. He has no hiring or termination authority. He has no ability or authority to amend anyone's pay or impact performance reviews of other employees. He has no policy setting role. He sits on no senior management committees. He has little impact to company strategy other than a general solicitation for such input made to all employees. He is not an executive staff or senior level manager.

Finding No. 4.

MT had no knowledge of what is a training agency under ETP's definition or criteria, had not applied for such, made no representation that it is a private training entity, a school or education agency or was ever aware that it was entitled for such additional reimbursement. This is an ETP administrative error and may be reversed at ETP's discretion.

Finding No. 5.

This is strongly disputed and has been covered in this response in previous sections.

Finding No. 6.

We concede this finding as an administrative error.

Finding No. 7.

This finding is only valid and applicable based on final adjustments and only to that extent. Commensurate corrections will be made by MT in the future if necessary.

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

REMEDIES

There are alternative remedies to the administrative error conclusions that MT modestly and respectfully requests:

Remedy No. 1.

We acknowledge the systemic administrative error that the President, as the de-facto supervisor of all employees at MT signed all the rosters when he should have only signed 50%. Such an administrative error would have been corrected easily had a timely ETP monitoring/coaching visit been made during the project. The parties have mutual culpability for the error not being corrected. We suggest a 20% reduction in the ETP reimbursement amount since 100% of the training has been delivered and 80% can be readily proven.

Remedy No. 2.

MT prefers the above Remedy No. 1.

However, as an alternative and additional remedy, we suggest an extension of the agreement for four (4) months.

This would allow MT to redo 20% of the hours of its employees in good faith at its own cost. We would invite any number of monitoring visits ETP deems necessary. Such a remedy allows for coaching to MT of the correct ETP procedures to be followed on the rosters and deliver the training to MT employees, which is the true mission of both organizations. We recognize this as a novel and unusual approach but it offers an amicable resolution and maintains a harmonious relationship between ETP and MT. We genuinely and in good faith seek not a negative audit finding in the public domain which damages MT's reputation.

Sincerely,



Neil Kripalani
On behalf of MemoryTen, Inc.

Enclosures.

Cc: Sally Anne Monti
Ken Olsen

ATTACHMENT A – Contractor's Response to Draft Audit Report

EMPLOYMENT

DEC. 07 2009

TRAINING PANEL

MT Group Senior Management

As indicated earlier, other than Ken Olsen, no member of the management is a legal corporate officer of any of the MT Group of companies, except in title only.

President, Chairman and Secretary/Treasurer

Bachelor of Science, Chemical Engineering, 1984
Rensselaer Polytechnic Institute.

Chief Financial Officer

Masters in Accounting, 1981
Certified Public Accountant, 1985

General Counsel

Masters in Business Administration, 1982
Certified General Accountant (Canada), 1986 (US C.P.A. Equivalency and member of the California Institute of CPAs)
Member of California State Bar, 2004

It is incredulous to believe that the three above professional management individuals would risk, in even the slightest manner, any tarnishing to their professional reputations, professional accreditations and designations and their licenses as Engineers, CPAs and Attorneys in a \$50 million business for ill gotten gains of \$132,288 of ETP funds through misrepresentation of facts. Such an allegation will be formally and vigorously challenged (with full reservation of all legal rights).

The Draft Audit Report makes some serious allegations of misrepresentation by MT. We suggest that the Audit Manager seriously reconsider the legal elements, standards of evidence necessary and enforceability issues to arrive at such a conclusion hastily. In addition we ask him to reconsider the use of such inflammatory and defamatory language prior to its use in a casual manner as he did the definition of 'manufacturer' (See earlier section of this response letter).

ATTACHMENT A – Contractor's Response to Draft Audit Report

Manufacturing - Wikipedia, the free encyclopedia

Page 1 of 2
EMPLOYMENT

DEC 07 2009

TRAINING PANEL

Manufacturing

From Wikipedia, the free encyclopedia

Manufacturing is the use of machines, tools and labor to make things for use or sale. The term may refer to a range of human activity, from handicraft to high tech, but is most commonly applied to industrial production, in which raw materials are transformed into finished goods on a large scale. Such finished goods may be used for manufacturing other, more complex products, such as household appliances or automobiles, or sold to wholesalers, who in turn sell them to retailers, who then sell them to end users - the "consumers".

Manufacturing takes turns under all types of economic systems. In a free market economy, manufacturing is usually directed toward the mass production of products for sale to consumers at a profit. In a collectivist economy, manufacturing is more frequently directed by the state to supply a centrally planned economy. In free market economies, manufacturing occurs under some degree of government regulation.

Modern manufacturing includes all intermediate processes required for the production and integration of a product's components. Some industries, such as semiconductor and steel manufacturers use the term *fabrication* instead.

The manufacturing sector is closely connected with engineering and industrial design. Examples of major manufacturers in the United States include General Motors Corporation, Ford Motor Company, Chrysler, Boeing, Gates Corporation and Pfizer. Examples in Europe include Airbus, Daimler, BMW, Fiat, and Michelin Tyre.

Part of a series of articles on
Industry



Manufacturing methods

Batch production • Job production

Continuous production

Improvement methods

LM • TPM • QRM

–TOC • Six-Sigma • RCM–

Information & communication

ISA-88 • ISA-95 • ERP

SAP • IEC 62264 • B2MML

Process control

PLC • DCS

Contents

- 1 History and development
 - 1.1 Manufacturing systems: The changing methods of manufacturing
- 2 Economics of manufacturing
- 3 Manufacturing and investment around the world
- 4 Taxonomy of manufacturing processes
- 5 Manufacturing categories
- 6 Theories
- 7 Control
- 8 See also
- 9 References
- 10 Sources



Assembly of Section 41 of a Boeing 787 Dreamliner.

ATTACHMENT A – Contractor's Response to Draft Audit Report

Electronics manufacturing - Wikipedia, the free encyclopedia

Page 1 of 2

EMPLOYMENT

DEC 07 2008

TRAINING PANEL

Electronics manufacturing

From Wikipedia, the free encyclopedia

The industrial **electronics manufacturing** process for the electronic assemblies found in many of today's electronic devices, is a multi-step process.

Contents

- 1 Component and PCB manufacturing
- 2 Mounting surface-mount components
- 3 Mounting through-hole components
- 4 Depanel
- 5 Cleaning and drying
- 6 Case-up
- 7 Testing

Component and PCB manufacturing

Components such as resistors, capacitors and integrated circuits are generally made by specialized contractors. Integrated circuits are generally made by the process of photolithography.

Printed circuit boards (PCBs) are usually manufactured by specialized contractors.

Mounting surface-mount components

Surface-mount components can be hand-soldered, but usually they are mounted using surface-mount technology. The process usually consists of three steps:

1. A solder paste is printed where the components need to make a connection with the PCB tracks
2. Components are placed using a pick and place machine
3. The PCB passes through a reflow oven

The process is repeated twice in order to populate both sides of the PCB.

Mounting through-hole components

Through-hole components and connectors can be hand-soldered, but usually they are mounted using wave soldering or selective soldering techniques.

Depanel

In order to increase manufacturing capacity, PCBs are often designed so that they consist of many smaller individual PCBs that will be used in the final product. This PCB cluster is called a panel or multiblock. The large panel is depaneled at some stage in the process.

ATTACHMENT A – Contractor's Response to Draft Audit Report

Electronics manufacturing - Wikipedia, the free encyclopedia

Page 2 of 2

EMPLOYMENT

DEC 07 2009

TRAINING PANEL

Cleaning and drying

A completed assembly needs to be cleaned. Various techniques are used depending on what type of solder and flux was used. A cleaned assembly needs to be dried before any power can be applied.

Case-up

The case-up process consists of one or more of the following:

- Adding a conformal coating or potting
- Final mounting of the depaneled PCB in an enclosure using various methods: screwing etc.

Testing

Electronic assemblies are tested at various process steps using the following methods:

- In-circuit testing of integrated circuits and other components
- Inspection of components and joint quality, using simple visual inspection, X-Ray inspection (usually of invisible joints, e.g. BGA), and/or automated optical inspection
- Final functional test after case-up
- Various other tests for assembly functioning in a range of conditions (temperature, humidity, vibration, strain, etc.)

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Categories: Electronics manufacturing

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ATTACHMENT A – Contractor's Response to Draft Audit Report

Agile manufacturing

From Wikipedia, the free encyclopedia

EMPLOYMENT

DEC 07 2009

TRAINING PANEL

Agile manufacturing is a term applied to an organization that has created the processes, tools, and training to enable it to respond quickly to customer needs and market changes while still controlling costs and quality.

An enabling factor in becoming an agile manufacturer has been the development of manufacturing support technology that allows the marketers, the designers and the production personnel to share a common database of parts and products, to share data on production capacities and problems — particularly where small initial problems may have larger *downstream* effects. It is a general proposition of manufacturing that the cost of correcting quality issues increases as the problem moves downstream, so that it is cheaper to correct quality problems at the earliest possible point in the process.

Agile manufacturing is seen as the next step after LEAN in the evolution of production methodical. The key difference between the two is like between a thin and an athletic person, agile being the latter. One can be neither, one or both. In manufacturing theory being both is often referred to as leagile. According to Martin Christopher, when companies have to decide what to be, they have to look at the Customer Order Cycle (the time the customers are willing to wait) and the leadtime for getting supplies. If the supplier has a short lead time, lean production is possible. If the customer order cycle is short, agile production is beneficial.

Contents

- 1 Background
- 2 Key attributes
- 3 See also
- 4 External links
- 5 References

Background

Key attributes

Goldman et al. suggest that *Agility* has four underlying components:

1. delivering value to the customer;
2. being ready for change;
3. valuing human knowledge and skills;
4. forming virtual partnerships.

The first three of these are also attributes of *lean manufacturing*.

See also

- Quality

ATTACHMENT A – Contractor's Response to Draft Audit Report

Agile manufacturing - Wikipedia, the free encyclopedia

Page 2 of 2

External links

- The CAISR agile manufacturing project

References

- L. Goldman, R.L. Nagel and K. Preiss, *Agile Competitors and Virtual Organizations - Strategies for Enriching the Customer*, Van Nostrand Reinhold, 1995.
- Martin Christopher. "Logistics and Supply Chain Management"

Retrieved from "http://en.wikipedia.org/wiki/Agile_manufacturing"

Categories: Manufacturing | Quality control | Management | Business terms

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EMPLOYMENT

DEC 07 2009

TRAINING PANEL

ATTACHMENT A – Contractor's Response to Draft Audit Report



State of California
Employment Training Panel

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

Training Proposal for:
MemoryTen, Inc.

Agreement Number: ET08-0428

Panel Meeting of: **March 28, 2008**

ETP Regional Office: **San Francisco Bay Area**

Analyst: A. Nastari

PROJECT PROFILE

Contract
Type: Priority/Retrainee
<100 Retrainee

Industry
Sector(s): Manufacturing

Counties
Served: Santa Clara

Repeat
Contractor: ☒ Yes ☐ No

Union(s): ☐ Yes ☒ No

Priority
Industry: ☒ Yes ☐ No

Turnover Rate %	Manager/ Supervisor %
8%	12.5%

FUNDING DETAIL

Program Costs	Support Costs	Total ETP Funding
\$132,288	\$0	\$132,288

In-Kind Contribution
\$75,000

ATTACHMENT A – Contractor's Response to Draft Audit Report

MemoryTen, Inc.

March 28, 2008

ET08-0428

TRAINING PLAN TABLE

Job No.	Job Description	Type of Training	Average No. of Trainees	Range of Hours		Average Cost per Trainee	Post-Retention Wage
				Class / Lab	CBT		
1	Priority/Retrainee	Business Skills, Computer Skills, Continuous Improvement, Manufacturing Skills	48	24 - 200	0	\$2,756	\$14.02
				Weighted Avg: 106			

Minimum Wage by County: The minimum wage requirement for Santa Clara is \$14.02 per hour.

Health Benefits: ☒ Yes ☐ No This is employer share of cost for healthcare premiums – medical, dental, vision.

Used to meet the Post-Retention Wage?: ☒ Yes ☐ No ☐ Maybe ☐ N/A

\$.02 per hour may be used to meet the Post-Retention Wage.

Other Benefits: Life and disability insurance; 401K plan; company-sponsored pension plan; flexible spending plan; annual vacation, sick, holiday, and other paid time off.

Wage Range by Occupation	
Occupation Title	Wage Range
Managers	\$18.00 - \$36.57
Production Staff	\$14.02 - \$21.50
Support Staff	\$15.00 - \$23.00
Technical Staff	\$14.02 - \$26.00

INTRODUCTION

In this proposal, MemoryTen, Inc. (MemoryTen) seeks funding for retraining its employees and those of two closely-affiliated business entities, as outlined below:

This proposal is for a group of employers representing three separate business entities that operate as one company and are located in the same site and share the same ownership.

Founded in 1995, MemoryTen designs, engineers, integrates, manufactures, tests, sells, distributes, and provides technical support for customized memory chips and components for computer equipment and products. In 2004, MemoryTen created an affiliate, known as We Love Macs, Inc. (We Love Macs), to provide the same services specific for Apple and Macintosh computers and products. In January 2007, MemoryTen acquired a competitor, OEM PC World (OEM), which brought in-house a higher volume of chip manufacturing services. All three companies share the same ownership, staff meetings, resources, and leadership. All three companies have less than 8% turnover rate. This proposal is for the training of 48 full-time workers of the 58 combined workers at the three entities.

ATTACHMENT A – Contractor's Response to Draft Audit Report

MemoryTen, Inc.

March 28, 2008

EMPLOYMENT
DEC. 07 2009
TRAINING PANEL
ET08-0428

MemoryTen, We Love Macs and OEM are eligible for ETP funding as a Group of Employers, whereby the three entities will combine training efforts. MemoryTen will assume liability for the contract as the primary employer holding secondary Agreements with its affiliates. (All references made to MemoryTen throughout this proposal include We Love Macs and OEM, unless otherwise specified.) This will be MemoryTen's second ETP Agreement.

The company representatives report that the majority of MemoryTen's business continues to be received via the internet, with a smaller portion received over the phone or by regular mail. Due to the critical need for computer components, orders must be filled promptly, at competitive prices, at times, needing to meet next-day delivery, either nationally or internationally.

Since the last ETP Agreement, MemoryTen has experienced an increase in customer demand for Technical Support as a pre-and post-sale requirement. The company has had to provide more technical training to increase its service staff's ability to address customers' issues across MemoryTen's various products.

MemoryTen has also experienced an increase in competition from overseas manufacturers, requiring MemoryTen to design and customize products that are faster and more economical than its competitors. Higher level of security shipping standards has further required MemoryTen to purchase new packaging equipment and to implement processes that will meet the standards.

Lastly, MemoryTen has found ways of becoming more environmentally conscious by implementing sustainable manufacturing processes in 1) refurbishing iPod Units for resale and 2) recycling computer components.

MemoryTen's funding proposal will meet the company's needs to train and cross-train workers in the various functions offered by each entity providing production, support, and technical staff, as well as managers, with the flexible skills necessary to meet company-wide demands. Training in business, computer, continuous improvement, and manufacturing skills will address the company's latest changes.

PROJECT DETAILS

Funding from MemoryTen's previous ETP Agreement allowed the company to lay the foundation for a structured training program during which time it was successful in creating a workforce that has come to understand and implement processes throughout its various departments. Workers are better equipped with skills that allow them to identify situations that would otherwise result in rework. Workers can now take the initiative in addressing issues upfront rather than having to rely on the direction from upper management.

The creation of a cross-functional team has further allowed MemoryTen to expand business initiatives by acquiring a higher volume of chip manufacturing services. The increase in business demands results in secure high paying jobs for its workers.

Now, with the completion of its first Agreement, MemoryTen is in the position to move to the next level of a high performance workplace. An essential part of this proposal is in Lean Manufacturing. This course had been included in the company's first project, but had to be put on hold because the company was expanding into an area of business known as Sustainable Recycling. This division disassembles and recycles used, outdated, and mal-functioning computer components, housings, chips, hard drives, memory accessories, and other related electronic and hardware items such as monitors for Personal Computers and Macs. The

ATTACHMENT A – Contractor's Response to Draft Audit Report

MemoryTen, Inc.

March 28, 2008

ET08-0428

EMPLOYMENT
DEC 07 2009
TRAINING PANEL

expansion required MemoryTen to rearrange some of its business areas. With the rearrangement complete, the company is now ready to deliver the Lean training.

With the addition of Sustainable Recycling, workers need training in new manufacturing skills in a reverse format – rather than assembling products, they will be disassembling and/or dismantling; refurbishing; and recycling. In an effort to become "Green Certified" MemoryTen has begun to refurbish iPod units for resale which keeps the price point down and provides reasonable profit margins. This also assists in allowing MemoryTen to compete with global costs and high volume competition.

Frontline Worker

The company uses several job classifications with a "supervisor" or "manager" in the title. In fact, based on the nature and scope of the job duties, these employees are not exempt from overtime compensation. Therefore, they meet the Panel's definition of frontline workers. (Title 22, California Code of Regulations, Section 4400(ee).) With this in mind, no more than 12.5% of the trainee population are supervisors or managers.

Commitment to Training

MemoryTen represents that ETP funds will not displace the existing financial commitment to training of participating employers. Indeed, MemoryTen anticipates that the opportunity for enhanced training made possible by ETP funds will encourage an ongoing financial commitment in this area.

The company's representatives report that the training funds provided in MemoryTen's recent ETP Agreement allowed the company to set the foundation for much needed training programs. The company is now able to provide new workers with skills across various job functions in a structured format, whereas before the ETP training funds, training was provided ad hoc as on-the-job training.

MemoryTen represents that safety training is, and will continue to be, provided in accordance with all pertinent requirements under state and federal law.

RECOMMENDATION

For the reasons set forth above, staff recommends approval of this proposal. Staff notes that MemoryTen is in a priority industry sector; and the proposal includes training in green technology which is another priority.

ACTIVE PROJECTS

The following table summarizes performance by MemoryTen under an active ETP Agreement:

Agreement No.	Approved Amount	Term	No. Trainees (Average)	No. Completed Training	No. Retained
ET06-0281	\$118,800	4/5/2006-4/4/2008	45	36	36

MemoryTen expects to achieve a 100% completion.

ATTACHMENT A – Contractor's Response to Draft Audit Report

MemoryTen, Inc.

March 28, 2008

EMPLOYMENT

ET08-0428

DEC. 07 2000

TRAINING PANEL

DEVELOPMENT SERVICES

MemoryTen retained Sallyanne Monti, Consultant in San Francisco to assist with development of this proposal for a flat fee of \$7,000.

ADMINISTRATIVE SERVICES

MemoryTen also retained Sallyanne Monti to perform administrative services in connection with this proposal for a fee to be determined, not to exceed 13% of payment earned.

TRAINING VENDORS

Institute for Business Performance of San Jose has been retained to provide training for a fee to be determined. Other trainers will be identified for ETP record-keeping purposes as they are retained by MemoryTen.

ATTACHMENT B – Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006